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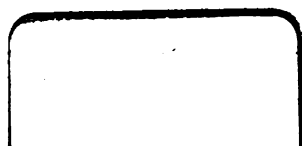
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Digest of the Cases

REPORTED IN THE

BENGAL LAW REPORTS,
VOLS. I TO XV,

AND IN THE SUPPLEMENTAL VOLUME OF FULL BENCH RULINGS.

WITH

B

AN INDEX OF THE NAMES OF THE CASES.

BY

J. V. WOODMAN,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW ; ADVOCATE OF THE
HIGH COURT, CALCUTTA.

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PREFACE.

THE publication of the Bengal Law Reports commenced in August, 1868, and ceased at the end of 1875; and during that period there were published fifteen volumes of current cases, comprizing all the most important rulings of the High Court, and one volume containing the Full Bench rulings of the High Court, from its institution in 1862 up to the commencement of the series of the Bengal Law Reports. These sixteen volumes contain a great number of important cases which are reported nowhere else, and very many others of which a fuller and more accurate report is given than will be found elsewhere. The present work is an endeavour—it is hoped not an unsuccessful one—to facilitate reference to the rulings reported in these sixteen volumes by bringing together under general headings the by no means inconsiderable body of law which those rulings contain. It was intended, also to be useful to the legal profession, as a work in which, under the general headings, the important rulings of the other High Courts might be noted, where they could then be found without the trouble which is often expended in searching for them. I should have been glad if I could have added to the utility of the present work by myself noting up and including in it the rulings of the High Courts of Madras, Bombay, and the North-Western Provinces; for it is undoubted that a good digest of the rulings of all the High Courts in India is much wanted; but I found that to do so would take up more extra time and labor than I could now afford.

In the present work the Privy Council cases are indicated by the letters P. C. after the number of the volume. The Full Bench rulings also are marked by the letters F. B., except those in the Supplemental Volume (Sup. Vol.), which are all Full Bench cases. A list of the names of the cases has been added. In making up this index of the names of cases, that portion of the name which is a mere prefix or title,—(as ‘Srimati,’ ‘Mussamat,’ ‘Rajah,’ ‘Maharajah,’ ‘Syed,’ and others),—has been omitted at the beginning of the name, and this should be remembered in looking out in the list any case which in the Reports commences with a title or a mere prefix.

25th February, 1878.

J. V. W.

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CORRIGENDA.

- Column 7, line 32, *omit* letters "B. L. R."
- " 66, line 5 from bottom, *for* "Criminal Procedure Code (Act XXV of 1861)," *read* "Penal Code."
- " 67, last line, *for* "90," *read* "96."
- " 74, line 27, *for* "Ramdyal Sing," *read* "Dwarkanath Hazra."
- " 76, line 12, *for* "79," *read* "97."
- " 77, line 4, *for* "xlv," *read* "xiv."
- " 78, line 6, *for* "3," *read* "2."
- " 80, case 2, heading, *for* "account," *read* "amount."
- " 89, case 5, heading, *for* "1855," *read* "1865."
- " 93, line 3 from bottom, *for* "1858," *read* "1868."
- " 107, line 37, *for* "Runjeet," *read* "Kunjal."
- " 123, line 15 from bottom, *for* "83," *read* "82."
- " 159, line 24 from bottom, *insert* "F. B." *after* "viii."
- " 189, case 5, page reference, *for* "24," *read* "23."
- " 192, case 17, reference, *omit* "F. B." *after* "v."
- " 200, case 2, page reference, *for* "5," *read* "4."
- " 226, case 53, page reference, *for* "36," *read* "37."
- " 275, line 7 from bottom, *for* "x," *read* "xv."
- " 313, line 17, *for* "28," *read* "27."
- " 377, line 25, *for* "Reg. VIII," *read* "Reg. VII."
- " 382, line 10, *for* "11," *read* "10."
- " 430, lines 22 and 23 from bottom, *for* name of case, *read* "Panchu Das v. Shudhamayi."
- " 430, line 22 from bottom, *for* "20," *read* "19."
- " 452, line 31, *for* "562," *read* "563."
- " 571, under heading "Right of Reply," *add*—
 "3. — In a suit for the construction of a will, a reply was allowed although the defendants called no evidence, the suit being of the nature of a special case. JUDAH v. JUDAH — — — — — v 439"
- " 585, line 34, *for* "Slae," *read* "Sale."
- " 629, name of case, *for* "Mohendranath," *read* "Mohima Churn."
- " 654, case 16, case reference, *for* "vi," *read* "iv."

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ABANDONMENT OF TENURE.

See RIGHT OF OCCUPANCY.

ABATEMENT OF RENT, SUIT FOR—*Act X of 1859, s. 23—Jurisdiction of Civil Court.*] *A.* obtained from *B.* a putnee lease, whereby it was agreed that *A.* should prepare a hustabad (rent-roll); that if it should appear that there was any deficiency in the jumma stated in the pottah, the correct jumma should be ascertained as therein provided; and that the rent should be made up to *A.* by *B.*, and *B.* should return a proportionate amount of the consideration-money. *A.* sued *B.* for an abatement of rent, for a refund of rent paid in excess, and for a proportionate refund of the consideration-money. *Held*, the suit was not a suit for abatement of rent within s. 23 of Act X of 1859, and the Civil Court had jurisdiction to try the different questions together in the same suit. *NILMONI SINGH v. ANNUNDPERSAUD MOOKERJEE* - - - - i F. B. 93

2. — *Jurisdiction of Revenue Court.*] *A.* granted a putnee to *B.*, to which a certain mehal appertained. The Government, to which the mehal belonged, in reversion upon an ijara held by *A.*, sold it to *C.* *Held*, that *B.* was entitled to abatement of rent from *A.*, and that a suit for abatement, under the circumstances, was cognizable by the Revenue Court. *Seemle*,—Where there is no specification in the original contract of the amount of rent payable for the portion of land for which abatement is claimed, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased. *BRIJANATH PAL CHOWDREY v. HIRALAL PAL* - - - - i A. C. 87

3. — *Lessee—Putneedar—Act X of 1859, s. 23.*] A putneedar, or any other lease-holder, may bring a suit against the zemindar for abatement of rent, under s. 23, Act X of 1859. *RAMNARAYAN BANERJEE v. JAYAKRISHNA MOOKERJEE* - - - - Sup. Vol. 70

(2)

ABATEMENT OF SUIT.

See INSOLVENT ACT.

ABETMENT—*Omission to give information to Police of offence committed—Penal Code, s. 107.*] An omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed. *QUEEN v. KHADIM SHEIKH* - - - iv A. Cr. 7

2. — *Giving evidence in support of false charge—Penal Code, ss. 109 and 211.*] A person cannot be convicted of abetment of a false charge, solely on the ground of his having given evidence in support of such charge. *QUEEN v. RAM PANDA* - - - ix App. 16

ABKARRY LAWS.

See ACT XXI OF 1856.

LORD'S DAY ACT.

ABSCONDING OFFENDER—*Criminal Procedure Code (Act XXV of 1861), ss. 183, 184—Act X of 1872, ss. 171, 172—Issue of proclamations for appearance—Forfeiture of property.*] In order to lay a sufficient foundation for the issue of a proclamation under s. 185, Act XXV of 1861, and the accompanying order of attachment under s. 184, the Magistrate must, on some sufficient materials, find judicially that the person against whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding the service of the warrant of arrest previously issued against him. *Seemle*,—*Per PHEAR, J.*—The period of thirty days, which is prescribed in s. 183 as the minimum period within which the person is to be required by the proclamation to appear, runs from the date on which the publication in the mode prescribed by the same section should be effected, not from the date of the issue of the proclamation. The declaration of forfeiture directed to be made in s. 184 was intended to be in furtherance of a matter of procedure, and not simply as a mode of punishment for contempt of process; therefore, where it is not made before the person affected by the proclamation has

ABSCONDING OFFENDER—continued.

come in, or has been brought in, it ought not to be made at all. **IN THE MATTER OF THE PETITION OF RAMKISHOR SEIN** - - - x Ap. 14

2. — *Penal Code, s. 174.*] Where property of an absconding offender had been attached and declared to be at the disposal of Government under s. 184 of the Criminal Procedure Code, and the offender was subsequently convicted under s. 174 of the Penal Code, and such conviction was upheld on appeal,—*held*, the High Court had no power to make any order with respect to such property. **IN THE MATTER OF THE PETITION OF THE GOVERNMENT OF BENGAL** - - - ix 342

ABSENCE BY REASON OF TRANSPORTATION.

See LIMITATION ACT XIV OF 1859, s. 13.

ABUSE, SUIT FOR DAMAGES FOR.

See JURISDICTION OF CIVIL COURT.

ACCOMPLICE—Corroborative evidence—Setting aside conviction for error in law.] The uncorroborated testimony of one or more accomplice or accomplices is sufficient in law to support a conviction. The evidence of accomplices should not be left to the jury without such directions and observations from the Judge as the circumstances of the case may require, pointing out to them the danger of trusting to such evidence when it is not corroborated by other evidence. The omission to do so is an error in law in the summing up by the Judge, and is, on appeal, a ground for setting aside the conviction, when the Appellate Court thinks that the prisoner has been prejudiced by such omission, and that there has been a failure of justice. The nature and extent of the corroboration requisite, explained and illustrated. **QUEEN v. ELAHI BAX**, [Sup. Vol. 459]

See **QUEEN v. BAKANTHANATH BANERJEE** - - - - - iii F. B. 2 note

ACCOUNT, ADJUSTMENT OF.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 16.

2. — *Parol evidence.*] The adjustment of an account may be proved by verbal evidence, and need not necessarily be in writing signed by the party to be bound. **PURNIMA CHOWDRAI v. NITTANAND SHAH** - - - Sup. Vol. 3

ACCOUNT BOOKS, ENTRIES IN.

See EVIDENCE.

ACCOUNT SALES.

See EVIDENCE.

ACCOUNTS.

See CO-SHARERS.

LIMITATION ACT X OF 1859, s. 33.
MORTGAGE.

ACCRETION—Alluvial land—Re-formation of land—Reg. XI of 1825, s. 4, cl. 1.] Where new land is formed, whether it be a re-formation on an old site, or whether it is formed where no land ever previously existed, ownership is determined by the ownership of the adjacent land to which it has accreted. To defeat or prevent

ACCRETION—continued.

the right by accretion, the person who claims the land as a re-formation of his old land is required to prove some continuing right of property in himself; it is not enough for him to rely merely on identity of site. **KATTEMONEE DORSEE v. RANEE MONMOHINEE DABEE** - - - - - Sup. Vol. 353

2. — *Evidence—Alteration of surface of land—Obliteration of landmarks.*] The question whether land is formed by gradual accretion depends on evidence; but it would be an error in law to consider it as conclusive of that fact that the surface of the land had all been changed, and the marks all obliterated, so that no old houses, or trees, or mounds, or vestiges of boundary could be found, and that all the surface of the land was fresh land which had been brought down by the river. **LOPEZ v. MADDAN MOHAN THAKUR** commented on. **PAHALWAN SINGH v. MAHARAJAH MAHESUR BUKSH SING** and **MAHESUR BUKSH SING v. MEGBURN SING** - - - - - ix P. C. 150

3. — *Condition of land when re-formed—Reg. XI of 1825, s. 4—Right to possession.*] The rule, where a question arises as to the right to the possession of land, either gained by gradual accretion or re-formation, or thrown up in a river or the sea, is, that the condition of the land where it was originally gained by alluvion or thrown up, and became the subject of property and capable of cultivation, or occupation as such, must be looked to. If, after the land comes into existence and is capable of cultivation, it is taken into possession and occupied, the subsequent drying up of the channel between such land and the shore does not affect the occupier's right to possession as against every one except the Government or one who can show a better title. S. 4, Reg. XI of 1825 is not against this view. **KALIPRASAD MAZUMDAR v. COLLECTOR OF MYMENSINGH**, [vi 261 note]

4. — *Nadi bharati.*] Nadi bharati, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was released by the Resumption Authorities. **HARI KISHORE DUTT v. COLLECTOR OF DACCA** - - - - - iii Ap. 116

5. — *Land diluviated by river—Riparian proprietors.*] Where property is wholly submerged by a river, land forming afterwards on the site will, when the ownership of that site is proved to exist in the former owner, remain in him, and the accretion will not belong to the adjacent proprietor. The decision in **Kattemonee Dorsee v. Rance Monmohinee Dabee** is erroneous in not regarding the site of the increment. **LOPEZ v. MADDAN MOHAN THAKOOR** - - - - - v P. C. 521

6. — *Re-formation—Lands temporarily or permanently settled.*] Where lands submerged by a river re-form, and can be identified as having formed a part of a particular estate, they belong to the owner of that estate, whether his estate consists wholly of permanently settled lands or whether it has been partly

ACCRETION—continued.

acquired as an alluvial accretion under temporary settlements made by Government with him as owner of permanently-settled lands. **HUBBAHAI SINGH v. SYUD LOOTF ALI KHAN**, [xiv P. C. 268]

7. — *Re-formation in navigable river—Proof of title.*] The re-formation of land in the bed of a navigable river is not *primâ facie* to be ascribed to a loss from any particular riparian estate, nor is the land which has been removed from an estate by sudden avulsion reclaimable, unless the circumstances supply evidences of identity. A title by accretion is not established by mere proof of general inclusive boundaries at a time preceding the formation of the chur, but there must be proof of the nucleus of accretion. The land gained will follow the title of the particular land forming the nucleus. **EKOWRI SINGH v. HIRALALL SEAL** - - - - - [ii P. C. 5]

8. — *Chur lands—Diluvion—Re-formation—Title—Reg. XI of 1825, s. 4.*] Where a chur formed in the middle of a river, and was settled with A., and by the recession of the river new land appeared, which was really a deposit on the ancient site of B.'s lands, though adhering to the chur, it was held to be B.'s land. The first rule established by s. 4, Reg. XI of 1825, does not apparently contemplate land other than that commonly known as alluvion, *viz.*, land gained by gradual and imperceptible accretion, the *incrementum latens* of the civil law. There is no express provision in the Regulation for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river, and which, after diluviation, reappears on the recession of the sea or river, and there is nothing to take away or destroy the original proprietor's right; such a case is to be determined by the general principles of equity and justice under the 5th rule contained in s. 4. A title founded on the original ownership and identification of land reappearing is to be confined *primâ facie* to the re-formation on that site. The cases of *Mussamut Imam Bandi v. Hurgobind Ghose*, *Lopez v. Maddan Mohan Thakur*, and *Echowri Singh v. Hiralall Seal* commented on. **NOGENDER CHUNDER GHOSE v. MAHOMED ESOF**, [x P. C. 406]

9. — *Chur or island formed in navigable river—Rights of Riparian proprietors.*] Where a chur or island is thrown up in a large navigable river, originally surrounded by deep, unfordable water, but between which and the estate of the zemindar a fordable channel has since been created, the criterion for deciding whether the Government has the right of disposing of that island, or whether the owner of the land to which it is most contiguous has that right, is to consider the state of circumstances at the time of the formation of the island,—that is, at the time when it was thrown up, and not the state of things at any subsequent or fluctuating period, such as the subsequent silting up of the bed

ACCRETION—continued.

of the river between the island and the contiguous estate so as to form a fordable passage. **BUDRUNNISSA CHOWDHRAIN v. PROSUNNO KUMAR BOSE** - - - - - [vi F. B. 255]

10. — *Reg. XI, s. 4, cl. 3—Island in navigable river—Right of riparian proprietor to—'Fordable.'*] Under cl. 3, s. 4, Reg. XI of 1825, a riparian proprietor has no right to an island thrown up in a large navigable river, when the channel which intervenes between his land and the island is, under ordinary circumstances, and at the most favourable seasons, unfordable for sixteen out of twenty-four hours. **NABIN KISHOR ROY v. JAGES PRASAD GANGOPADYA** - - - [vi 343]

11. — *Reg. XI, s. 4, cl. 3—Island in navigable river—Re-formation on old site—Right of Government.*] Under cl. 3, s. 4, Reg. XI of 1825, Government has no right to land thrown up as an island in the bed of a navigable river, when such island is formed on the site of land which had been washed away. **MANI LAL SAHU v. COLLECTOR OF SARUN**, [vi Ap. 93]

12. — .] The Government is not entitled, under cl. 3, s. 4 of Reg. XI of 1825, to take possession of land which has re-formed on an old site of land belonging to another, although the re-formation forms an island, and is surrounded by a channel which is not fordable. **COLLECTOR OF RAJSHAHYE v. RANI SHAMA-SOONDREE DEBEA** - - - - - [xiv 219]

13. — *Reg. XI of 1825, s. 4, cl. 2—Land separated from estate by change in course of a river.*] When a party has proved that land which formed part of his estate has, by a sudden change in the course of the river, been separated, he is entitled to recover such land under cl. 2, s. 4, Reg. XI of 1825. **RAI MANIK CHAND v. MADHURAM** - [iii P. C. 5]

14. — *Boundary fluctuating—Agreement as to mode of fixing boundaries—Riparian proprietors—Custom—Reg. XI of 1825, s. 2.*] The plaintiffs sued to obtain possession of land on the ground of the existence of a custom in the district that where land which had once been alluvial lies between two branches of a river, or two rivers, and from time to time the volume of water shifts, so that alternately one of those channels is deep, and the other is fordable, then the whole of such intermediate land belongs to the land-owner on the side of the channel which at any given time is fordable. *Held* (without deciding whether such a custom falls within s. 2, Reg. XI of 1825), no clear and definite usage had been established. A fluctuating boundary between zillas does not necessarily affect the rights of landed riparian proprietors. An *ikarnama* between two zemindars as to the mode of determining the boundaries of their estates, in the event of changes in the channel of river, cannot bind persons claiming under one with whom the perpetual settlement was subsequently made as to the lands in his possession, he being a stranger to that *ikarnama*. **BISSESSURNATH v. MOHESBUR BUKSH SING BAHADOOR** - - - - - [xi P. C. 265]

ACCRETIONS, SUIT FOR FRESH.

See CIVIL PROCEDURE CODE, s. 7.

ACCRETIONS TO PROPERTY FROM RENT.

See WILL.

ACCUMULATIONS — Income — Hindu widow.]

Accumulations are not income, and cannot be dealt with by a Hindu widow as such; they should be treated in the same way as the corpus of the estate. *GROSE v. AMIRTAMOYE DASI* - - - - iv O. C. 8

2. — But income and accumulations are not the same thing; therefore, *quære*, whether she can deal with accumulations as she can with income. *IN THE GOODS OF HARENDEANARAYAN GHOSE. KAILASNATH GHOSE v. BISWANATH BISWAS* - - - - iv O. C. 41

3. — *Right of Hindu widow to accumulations of income from her husband's estate.*] A Hindu widow is entitled to the accumulations of income from her husband's estate. *PANNALAL SEAL v. SRIMATI BAMSUNDARI DASI* - vi 733

4. — *Widow—Immoveable property purchased with accumulations.*] Immoveable property purchased by a Hindu widow with the profits of her husband's estate, there being no proof of any distinct intention on her part to sever such purchases from the estate and appropriate it to herself, held to form part of her husband's estate. *GONDA KOOPER v. KOOPER OODEY SINGH* - - - - xiv P. C. 159

See CHOWDHRY BHOLANATH THAKOOR v. MUST. BHAGABATTI DEY - vi B. L. R. 93

In that case it was held that though a Hindu widow cannot alienate property acquired by her out of funds derived from her husband, yet where she held under a deed which conveyed the property to her to enjoy for her lifetime and to incur all needful expenses, she was entitled to invest sums out of the income for the benefit of her daughter and granddaughter in the purchase of immoveable property for their maintenance. But this decision was, on the construction of the deed, reversed by the Privy Council. *See* I. L. R., 1 Calc., 104

ACCUSED PERSON.

See BAIL.

ACCUSED, RIGHT OF.

See WITNESSES.

ACKNOWLEDGMENT.

See MAHOMEDAN LAW, ACKNOWLEDGMENT.

ACKNOWLEDGMENT OF DEBT.

See HINDU LAW, JOINT FAMILY.
LIMITATION, REG. III of 1793.
LIMITATION ACT XIV of 1859, s. 4.

ACKNOWLEDGMENT OF TITLE.

See LIMITATION ACT XIV of 1859, s. 1, CL. 15.

ACQUIESCENCE.

See HINDU LAW JOINT FAMILY.
LANDLORD AND TENANT.
PRESCRIPTION.
WAIVER.

2. — *Right of way, interruption of—Erection of building.*] A. had a right of way over

ACQUIESCENCE—continued.

B.'s land. He allowed B. to erect a house on the pathway and enjoy it for seven years. He then brought a suit to have the pathway re-opened by pulling down B.'s house. *Held*, A. must be taken to have acquiesced in the interruption of his right of way, and his claim was one that a Court of equity and good conscience would not enforce. *BENI MADHAB DAS v. RAMJAY ROKH* - - - - i A. C. 213

3. — *Erection of building.*] When a man builds a house on land supposing it to be his own, or believing that he has a good title, and the real owner, perceiving his mistake, refrains from setting him right, and leaves him to persevere in his error, a Court of equity will not allow the real owner to assert his legal right against the other without at least making him full compensation. *RAMA v. SHEIKH JAN MAHOMED* - - - - iii A. C. 18

4. — *Suit for ejectment—Transferable tenure—Landlord and tenant—Permissive occupation.*] B. and C. and their father held lands for upwards of thirty-five years, and built houses on the same. B. and C. sold their tenures to D. and E. A., the zemindar, who had not objected to the building, now sued to eject D. and E. as trespassers. Evidence was given that the tenures were, by the custom of the country, transferable. *Held*, A. could not eject D. and E. *BENI MADHAB BANERJEE v. JAI KRISHNA MOOKERJEE* - - - - vii 153

See ESHAN CHUNDER GHOSE v. HURRISH CHUNDER BANERJEE - - - - x Ap. 6

5. — *Assignable interest—Sale in execution of decree.*] The plaintiff permitted B. to erect a thatched dwelling-house with mud walls on a piece of land belonging to the plaintiff, and B. dwelt in it for more than forty years. *Held*, that B. had an assignable interest in the house and land, which could, therefore, be seized and sold in execution of a decree against B., and that the purchaser who had obtained possession could not be dispossessed at the suit of the plaintiff. *DURGA PRASAD MISSEER v. BRINDABAN SOOKUL*, vii 159

6. — *Erection of buildings on land without objection by landlord—Land let for building purposes.*] A landlord who allows his lessee to invest capital in erecting buildings on lands let for cultivation, and raises no objection for a considerable number of years, will not be allowed to disturb the holding. The fact of buildings having been permitted without objection to stand on lands for a considerable number of years is *prima facie* proof that the land had been originally leased for building purposes. *BRAJA NATH KUNDU CHOWDEY v. STEWART* - - - - viii Ap. 51

7. — *Permissive occupancy—Erection of building—Right of possession as against purchaser.*] Where the defendant had been in possession of land for more than thirty years, and had without objection built upon the land, held, that he had not by such permissive occupancy acquired a right to retain possession when

ACQUESCENCE—continued.

served with notice to quit by a purchaser of the land. *ADDAITO CHARAN DEY v. PETER DAS* - - - - - xiii 417 note

ACQUITTAL.

See PENAL CODE, s. 352.

ACQUITTAL, IMPROPER.

See CRIMINAL PROCEDURE CODE (X OF 1872), s. 297.

ACQUITTAL, VERDICT OF.

See REVISION.

ACT OF STATE.

See JURISDICTION, MUNICIPAL COURT.

2. — *Arrest under Reg. III of 1818—Jurisdiction of Municipal Courts.*] A Mahomedan subject of the Crown was arrested in Calcutta, taken into the mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Reg. III of 1818. *Held*, that such arrest and detainer were not acts of State, but matters cognizable by a Municipal Court. *IN RE AMER KHAN* - - - - - vi 392

3. — *Resumption of Jagir by East India Company—Regulation law.*] Where lands were held by a jagirdar under the sovereign of an independent State on a jaidad tenure, i.e., on a grant of land, together with the public revenues thereof, on the condition of keeping up a body of troops to be employed when called on in the service of the sovereign, and on the conquest of the State by the East India Company, the jagirdar remained in the same position to the Company, *held*, that the resumption of the lands by the Company, and the seizure of the arms and stores appertaining to the tenure, on the death of the jagirdar, was not an act of State, and therefore the Municipal Courts had jurisdiction to entertain a suit by the representatives of the jagirdar against the Government for the possession of the land, and for the value of the arms and stores. This was so, although, at the time of the resumption, the Regulation law was not introduced into the territories in which the jagir was comprised. *FORRESTER v. SECRETARY OF STATE*, [xii P. C. 120]

4. — *Confiscation of territories of King of Delhi—Forfeiture.*] The status of the King of Delhi was that of a king recognized by the British Government; and the confiscation of his territories in 1857 was an act of State, and not an act done under color of any legal right of which a Municipal Court could take cognizance. His tenure of the territories assigned him by the Government was a tenure merely *durante regno*, and no power was conferred upon him of creating incumbrances which would survive his deposition. The word 'confiscation' does not necessarily import that the appropriation is to be made as a penalty for a crime, nor, when used in that sense, does it necessarily imply that the forfeiture has accrued upon conviction; but it may also be properly used as applicable to appropriations of property by Government as

ACT OF STATE—continued.

an act of State. *SALIGRAM v. SECRETARY OF STATE* - - - - - xii P. C. 167

5. — *Title to timber—Confiscation by Governor of Foreign State.*] The plaintiff brought a suit at Tonghoo in British Burmah to recover possession of certain timber, which he alleged the defendants had wrongfully and in collusion with the Burmese Governor of Ninghan, taken out of his possession in foreign territory and removed to Tonghoo. The defendants stated that they had acquired the timber from the Governor of Ninghan in terms of an agreement between them and the Burmese Government. It appeared that the Governor of Ninghan had confiscated the plaintiff's timber in contravention of a royal mandate. After the institution of the suit, the defendants removed the timber from Tonghoo to Rangoon. *Held*, that a British Municipal Court might enquire into the character of the act of the Governor of Ninghan, and was not bound to accept it as an act of State. *BOMBAY BURMAH TRADING CORPORATION, LIMITED v. MIRZA MAHOMED ALI SHERAGEE* - - - x 345

ACT VIII OF 1835.

See SALE FOR ARREARS OF RENT.

ACT XXXII OF 1839.

See CONTRIBUTION.
INTEREST.

ACT IV OF 1840.

See CIVIL PROCEDURE CODE, s. 14.
POSSESSION.

ACT IV OF 1840, ORDER UNDER.

See LIMITATION ACT XIV OF 1859,
s. 1, CL. 7.

ACT XXIII OF 1840, s. 1, ENDORSEMENT OF DECREE UNDER.

See CIVIL PROCEDURE CODE, s. 81.

ACT XIX OF 1841—Summary order under—Suit for possession—Limitation Act XIV of 1859, s. 1, cl. 5 & 12.] A summary order under Act XIX of 1841 for possession of property left by a deceased person is no bar to a regular suit to try the title to such property and to obtain possession under that title; it is, therefore, unnecessary to set aside the order before granting relief in the suit. Hence the period of limitation for such regular suit is that provided by cl. 12, s. 1, Act XIV of 1859, namely, twelve years, and not one year as provided by cl. 5 of the same section. *LAKNARAIN SINGH v. RANEE MANKOBE* - - - - - Sup. Vol. 633

ACT XIX OF 1843.

See REGISTRATION ACT XIX OF 1843.

ACT V OF 1844.

See PROMISSORY NOTE.

ACT I OF 1845, s. 21 — Sale for arrears of revenue—Purchase by manager of joint Hindu family—Suit by one member to recover his share.] A purchase by a managing member of a joint Hindu family, in his own name, at a revenue sale held under Act I of 1845, is not affected by s. 21 of the Act. A suit by one of the members, for recovery of possession

ACT I OF 1846, s. 21—continued.

of his share of the property, purchased by the managing member in his own name, but for the use of the family, is not a suit to oust a certified purchaser, and, therefore, not affected by s. 21, Act I of 1846. **TUNDAN SING v. PUKH NARAYAN SING** — — — — — v 546
Confirmed by P. C., on 9th June, 1874.

ACT IX OF 1847.

See ACCRETION.

JURISDICTION OF CIVIL COURT.

2. — *Reg. XI of 1825 — Chur in navigable river — Right of Government to.*] Act IX of 1847 does not alter the state of the law under Reg. XI of 1825, but merely lays down a procedure. There is nothing in Act IX of 1847 to prevent the Government from taking possession of a chur, after it has silted up, if the chur be one that the Government would be entitled to under Reg. XI of 1825. **BUDRUNNISA CHOWDHRAIN v. PROSUNNO KUMAR BOSE** — — — — — vi F. B. 255

3. — *Right of suit — Effect of an order for additional assessment.*] Certain land, which formed part of the plaintiff's zemindari, became, on its re-formation after submergence by a change in the course of the river Ganges, attached to the zemindari of J., and it being found so attached, an additional jama was, after proceedings taken by the Revenue Authorities under Act IX of 1847, assessed against J. in respect of it. In a suit in the Civil Court brought by the plaintiff against the Government, J., and L., an ijaradar under J., to recover possession of the land, — *held*, that the suit was not barred by the proceedings under Act IX of 1847. S. 6 of that Act makes the orders passed under its provisions final only against the zemindar, not against third persons. Nor would s. 9 bar the suit; the words of that section do not necessarily extend to forbidding a suit brought to recover property which the Government or its officers may be instrumental in keeping away from the rightful owner. *Held* on the facts, that the Government had not, by the proceedings under Act IX of 1847, or otherwise, interfered with the plaintiff's rights so as to entitle him to relief against it in the present suit. **COLLECTOR OF MOORSHEDABAD v. ROY DHUNPUT SINGH BAHADOOR** — — — — — xv 49

4. — *Rights of third parties.*] Act IX of 1847 does not affect any question between the person in possession and any person other than the Government. **KALIPRASAD MAZUMDAR v. COLLECTOR OF MYMENSINGH** — — — — — vi 261 note

ACT XIII OF 1848.

See THAKBUST AWARD.

2. — *Settlement award—Suit to set aside.*] Act XIII of 1848 applies only to suits for contesting the justice of an award as between the contending parties, and not to suits for the purpose of amending a settlement and establishing the rights of persons who were not parties contesting between themselves before the Collector. **KOMUL KISSEN SURKHUL v. BISSEONATH CHUCKERBUTTY**,

[Sup. Vol. Ap. 3

ACT XXI OF 1848.

See TAZI MANDI CHITTIES.
TROVER.

ACT XI OF 1849.

See MANDAMUS.

ACT IX OF 1850.

See CONTRACT ACT, s. 27.
SMALL CAUSE COURT, PRESIDENCY TOWNS.

—, s. 32.

See PARTIES.

—, s. 88.

See BAILMENT.

ACT XVIII OF 1850—Liability of Magistrate—Order under Criminal Procedure Code (Act XXV, of 1861), Ch. XX, ss. 62, 308.] The plaintiff sued a Magistrate for damage occasioned to him by the cutting of his bund at the Magistrate's order. The Magistrate raised the defence that he was protected by Act XVIII of 1850 for all acts done by him *bonâ fide* in his magisterial capacity. *Held*, on the facts, that the Magistrate was liable. Act XVIII of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he in arriving at that belief acted reasonably, circumspectly, and care fully. A Magistrate would not be personally liable for an act done by him under a misconstruction or misinterpretation of the law, if his proceedings were in other respects regular, and if the misconstruction or misrepresentation were one which might have been put upon the law by a reasonable man, acting with ordinary care and attention. But a Magistrate is not protected by saying he misconstrued the law, unless his proceedings have been in other respects regular, and the view of the law taken by him is such as a reasonable and careful man might take. Neither s. 62 nor Ch. XX of the Criminal Procedure Code authorizes a Magistrate to dispose of the property of others at his mere will and pleasure, or without his having distinct and legal grounds for the course he takes. When a Magistrate violates the plain language of the law and the very first principles of judicial enquiry, his proceedings presumably are characterized by want of care. **TARAKNATH MOOKHOPADHYA v. COLLECTOR OF HOOGHLY** — — — — — iv A. C. 37

2. — The Lower Appellate Court found as a fact that the Magistrate proceeded under Ch. XX of the Criminal Procedure Code; that he called on the plaintiff to show cause, and did hold an enquiry through the police. The High Court, in special appeal, accepting the fact as found by the Lower Court, *held*, that the Magistrate was acting judicially and with jurisdiction (though under the circumstances disclosed carelessly and irregularly), and was therefore protected from an action for damages. A proceeding under Ch. XX of the Criminal Procedure Code, if regular and such as the law prescribes, is a judicial proceeding; but a Magistrate does not act legally under it if he

ACT XVIII OF 1860—continued.

does not first call on the person with whose property he proposes to interfere to appear and show cause. **COLLECTOR OF HOOGHLY v. TARAKNATH MUKHOPADHYA** - - vii 449

3. — *Order made by Political Agent in his executive capacity.*] In a suit brought in the High Court, Bombay, by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him which affected their caste, the plaintiff stated that the defendant, at the time the orders were made, exercised exclusive civil jurisdiction throughout the territories of the Chief of Modhool, and that the Court of the defendant was a Court subject to the superintendence of the High Court at Bombay; and that the orders complained of were made by him as Political Agent and in his executive capacity. *Held*, that there was no cause of action whether the acts were done by the defendant as Political Agent or in his judicial and magisterial capacity. **INHABITANTS OF MAHALINGPORE v. ANDERSON** - - vii 452 note

4. — *Judicial act—Right of suit—Liability of Magistrate—Beng. Act VI of 1868, Sch. K.*] The removal by a Magistrate of an obstruction in the exercise of the powers conferred upon him by Sch. K, cl. 1, of Beng. Act VI of 1868, is not a judicial act; and the Magistrate is, therefore, not protected by Act XVIII of 1860 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to create the obstruction and for damages. **CHUNDER NARAIN SINGH v. BRIJO BULLUB GOYEE** - - - - xiv 254

ACT XXI OF 1860.

See HINDU LAW, WIDOW.

ACT XXXIV OF 1860.

See REG. III OF 1818.

ACT XLII OF 1860.

See RAILWAY COMPANY.

ACT VIII OF 1861.

See TOLLS, LESSEE OF.

ACT XXV OF 1862.

See LIMITATION ACT XIV OF 1859, s. 19.

ACT XIX OF 1863, s. 28.

See WITNESSES.

ACT II OF 1865.

See EVIDENCE.

—, s. 24.

See PRIVILEGED COMMUNICATION.

ACT XXVIII OF 1865.

*See HINDU LAW, USURY.
MAHOMEDAN LAW, USURY.
INTEREST.*

ACT IV OF 1866.

See HINDU LAW, WIDOW.

ACT XXI OF 1856—Abkarry Laws—Realization of fine—Criminal Procedure Code (Act XXV of 1861), s. 61—Act VIII of 1869.] The

ACT XXI OF 1856—continued.

provisions of s. 61 of the Criminal Procedure Code do not apply to fines imposed under Act XXI of 1856; such fines cannot be levied by distress and sale of the offender's property. **QUEEN v. JUNGLI BELDAR** - - viii Ap. 47

ACT VI OF 1857—Acquisition of land by Government—Right of way.] When land is taken by the Government under Act VI of 1857, the land is absolutely vested in the Government under s. 8, free from any right of way previously enjoyed by the public over such land. **IN THE MATTER OF THE PETITION OF FENWICK** - - - vi Ap. 47

ACT XI OF 1857, s. 1.

See FORFEITURE OF PROPERTY.

ACT XXV OF 1857.

See FORFEITURE OF PROPERTY.

LIMITATION ACT XXV OF 1857.

—, ss. 1, 2, and 3—*Construction of.*] The words in s. 3, Act XXV of 1857, "such an offence as aforesaid," refer to the offences mentioned in s. 2, as well as to the offence of mutiny mentioned in s. 1 **GANESHLAL v. AMIR KHAN**— viii 83

ACT III OF 1858.

See REG. III OF 1818.

ACT XXXV OF 1858.

See LUNATIC.

ACT XL OF 1858.

See APPEAL.

*CERTIFICATE OF ADMINISTRATION.
COURT OF WARDS.
MAJORITY, AGE OF.*

2. — *Removal of guardian—Summary procedure.*] Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court, but under a will of the minor's grandfather. **LAKHI PRIYA DAS v. NABIN CHANDRA NAG** - - iii A. C. 37

—, s. 3—*Suit on behalf of a minor—Subject of suit of small value.*] A suit can be prosecuted or defended by a relative, on behalf of a minor, without a certificate under Act XL of 1858, when the subject-matter of the suit is of a small value. A suit to recover real and personal property of the value of Rs. 7,260 was allowed to be prosecuted by the brother of a minor, on behalf of himself and his minor brother, under s. 3, Act XL of 1858. **NABADWIP CHANDRA SIKKAR v. KALINATH PAL** - - - iii Ap. 130

—, ss. 4, 6, and 7—*Minor—Appointment of guardian.*] Under ss. 4, 6, and 7, Act XL of 1858, the Court has power to appoint a guardian other than the father of a minor, for the purpose of instituting suits and protecting the property of the minor. **ETWARI v. RAM NARAYAN RAM** - - - - iv Ap. 71

—, ss. 7, 19, and 21—*Power of Court to recall certificate granted under s. 7, Act XL of 1858.*] A certificate granted under s. 7, Act XL of 1858, can be recalled summarily under s. 21. Where the application for recall is based on charges of waste and mismanagement, the certificate may be so recalled, if a sufficient case is made out, without any account having previously

ACT XL OF 1858, ss. 7, 19, and 21—continued.

been taken in a regular suit under s. 19. IN THE MATTER OF THE PETITION OF SHURWAR HOSSEIN KHAN - - - Sup. Vol. 720

—, s. 18—*Power of guardian to sell or mortgage—Sanction of Court.*] Act XL of 1858 does not prevent a guardian, who has obtained a certificate thereunder, from selling or mortgaging property in Calcutta without the sanction of the Court. GOPALNARAIN MOZOOMDAR v. MUDDOMUTTY GUPTEE - - - xiv 21

2. — *Sale by guardian without sanction of the Court.*] Where a guardian had mortgaged certain property of a minor without previously obtaining the sanction of the Court under s. 18 of Act XL of 1858, but it was found that the mortgage transaction was a proper one, and there had since been a decree in a suit in which the minor was properly represented under which the property had been sold, the irregularity as to the mortgage being made without the sanction of the Court was not allowed to prevail. ALFOOTONNISSA v. GOLUCK CHUNDER SEN - - - xv 353 note

3. — *Sale by guardian without sanction of the Court—Grounds for recall of certificate.*] Where a guardian, appointed under Act XL of 1858, mortgaged certain immoveable property of the minor without obtaining the sanction of the Court under s. 18 of that Act, and it appeared he was related to and jointly interested with the minor in the management of the property, held, that it was not a sufficient cause to recall the certificate, unless it was made clear that in the mortgage transactions he had acted in bad faith, or had injured, or was likely, or had intended, to injure the interests of the minor. IN THE MATTER OF THE PETITION OF BUSUNTO COOMAR GHOSE - - - xv 351 note

4. — *Sale by guardian without sanction of the Court—Invalidity of sale—Refund of purchase-money.*] A sale of a minor's immoveable property by a guardian appointed under Act XL of 1858, and who was also the kurta of the joint family of which the minor was a member, is invalid if made without the sanction required by s. 18 of that Act, even though the sale may have been for the benefit of the minor and made in good faith to pay off the debts of the ancestor. Where, however, it was found that the purchaser had acted *bonâ fide*, and had paid a fair price for the property, he was held entitled to a refund of so much of the purchase-money as had been expended for the benefit of the minor. SHURRUT CHUNDER CHUTTO-PADHYA v. RAJKISSEN MOOKERJEE - - - xv 350

ACT VIII OF 1859.

See CIVIL PROCEDURE CODE.

ACT IX OF 1859, DECREE UNDER.

See GOVERNMENT OFFICERS, ACTS OF.

ACT IX OF 1859, s. 20.

See LIMITATION ACT IX OF 1859.

ACT X OF 1859.

See EXECUTION OF DECREE.

LIMITATION ACT X OF 1859.

ACT X OF 1859—continued.

See LIMITATION ACT XIV OF 1859.
WITHDRAWAL FROM SUIT.

ACT X OF 1859, DECISION UNDER.

See RES JUDICATA.

ACT X OF 1859, s. 2.

See KABULIAT, SUIT FOR.

—, s. 4.

See ENHANCEMENT OF RENT.

—, s. 6.

See RIGHT OF OCCUPANCY.

—, s. 9.

See KABULIAT, SUIT FOR.

—, s. 10.

See SMALL CAUSE COURT, MOFUSSIL.

—, s. 13.

See ENHANCEMENT OF RENT.

—, s. 15.

See ENHANCEMENT OF RENT.

—, ss. 15 and 16—*Districts to which permanent settlement has not been extended—Surborakari tenures in Cuttack—Transferable tenures.*] The provisions of ss. 15 and 16 of Act X of 1859 apply to the whole of the Provinces of Bengal, Behar, Orissa, and Benares, and not only to such of the districts in those provinces to which the Permanent Settlement has been extended. Surborakari tenures in Cuttack are permanent, hereditary, and transferable. SAD-DANUNDO MAITI v. NOWRATTAM MAITI, viii 280

—, s. 17.

See ENHANCEMENT OF RENT.

—, ss. 21, 22, and 23.

See ACT X OF 1859, s. 78.

—, s. 23.

See ABATEMENT OF RENT.

ENHANCEMENT OF RENT.

JURISDICTION OF CIVIL COURT.

LANDLORD AND TENANT.

—, s. 24—*Assignee of landlord—Gomasta—Right of suit.*] An assignee of a landlord can sue a gomasta employed by the latter for the recovery of moneys received by the gomasta in the course of his employment under s. 24 of Act X of 1859. LALMOHUN SINGH v. TRILAKHANATH GHOSE - - - vi Ap. 17

—, s. 25.

See APPEAL.

LANDLORD AND TENANT.

STAMP ACT XXVI OF 1867.

2. — *Application—Suit.*] An application to the Collector under s. 25, Act X of 1859, is not a suit. PHILIP v. SHIBNATH MOITRE - - - Sup. Vol. 31

3. — *Ejectment on expiry of lease—Jurisdiction of Civil Court.*] S. 25, Act X of 1859, does not preclude a zemindar or other person seeking to eject a tenant upon the ground that his lease has expired from asserting his rights in the Civil Courts, instead of applying to the Collector for assistance. MUDUN MOHUN ROY v. GOURMONER GOPTO, [Sup. Vol. 31

ACT X OF 1859, s. 27.

See BENG. ACT VI OF 1862, s. 4.
LANDLORD AND TENANT.
RES JUDICATA.

—, s. 28.

See JURISDICTION OF CIVIL COURT.

2. — *Onus probandi.*] In order to obtain relief under s. 28 of Act X of 1859 the plaintiff must prove that the tenant holds under a grant made since 1st December, 1790. *INDRAJIT KOONWARI v. CHOKOWARI SAHU* — — — — — Sup. Vol. 1

—, ss. 28 and 100—*Appeal—Jurisdiction of Collector and of Zilla Judge—Suits—Applications.*] Appeals from orders passed by a Collector on applications under s. 28, Act X of 1859, lie to the Zilla Judge, unless the amount in dispute exceeds rupees 5,000, in which case the appeal will lie to the High Court. Applications under Act X of 1859, s. 28, are suits, and should be treated as such not only as regards procedure, but also as regards appeals. (*Raikes and Trevor, J.J., dissenting.*) *BISWAMBHAR MISSEER v. GANPAT MISSEER* — — — — — Sup. Vol. 5

—, s. 32.

See BENG. ACT VIII OF 1869, s. 29.

—, s. 47.

See SERVICE OF SUMMONS.

—, ss. 54, 55.

See SUPERINTENDENCE OF HIGH COURT.

—, s. 56.

See SERVICE OF SUMMONS.

—, s. 58.

See CIVIL PROCEDURE CODE, s. 119.
SUPERINTENDENCE OF HIGH COURT.

—, s. 65.

See ISSUES.

—, s. 77.

See LIMITATION ACT X OF 1859.
ONUS PROBANDI.
SUPERINTENDENCE OF HIGH COURT.

2. — *Intervenor—Parties.*] A. and B., putneedars, each held a moiety of an estate. C., a ryot, paying rent to both, sold his tenure to D., who also obtained a farming lease of B.'s share in the putnee. A. sued C. for the whole rent of the estate. *Held*, that D. was entitled as B.'s lessor to be made a party to the suit under s. 77 of Act X of 1859. *JAMARAT MANDAL v. NILKANT SIRCAR; MANOHARA DAS v. NILKANT SIRCAR* — — — — — i A. C. 74

3. — *Intervenor—Parties.*] In a suit for arrears of rent at enhanced rate, defendant pleaded that he had sold the holding to a third party, who thereupon asked to be added as a defendant. *Held*, that such intervenor could not be made a party to the suit. *KALINATH ROY v. ISWAR CHUNDER GHOSAL* — ii F. B. 89

4. — *Intervenor—Parties.*] In a suit against ryots for arrears of rent of certain

ACT X OF 1859, s. 77—*continued.*

lands the appellant intervened, seeking to be added as a party under s. 77 of Act X of 1859, on the ground that his title to the lands in question had been declared by the decree of a Civil Court. *Held* (reversing the decision of the Collector), that the Deputy Collector was right in limiting his enquiry to the question whether the lands in dispute were covered by the decree. *BIR CHANDRA JUBARAJ v. MADHUB KAIBARTA* — — — — — ii A. C. 160

5. — *Intervenor—Parties—Receipt of rent.*] Where an intervenor in a rent suit applies to be made a party under s. 77 of Act X of 1859, distinctly relying upon that section, it must be inferred that his case is that he has been in receipt and enjoyment of the rent before and up to the time of the commencement of the suit, and his petition should not be rejected because it does not contain the words "that he claimed to occupy and receive the rent." *LACHMI NARAYAN PURI v. PUKRAJ SINGH* — — — — — ii Ap. 16

6. — *Intervenor—Receipt and enjoyment of rent.*] In a suit for arrears of rent the defendant set up in defence that the relation of landlord and tenant did not exist, as the tenure of the plaintiffs' superior landlord had been sold for arrears of rent, and that, under s. 16, Act VIII of 1865, the plaintiffs' tenure had lapsed, and that he had paid rent to the purchaser of the rights of the superior landlord. Under s. 77, Act X of 1859, the purchaser intervened. *Held*, that the issue to be tried in the case was "the actual and *bonâ fide* receipt of rent by the intervenor up to the time of the suit." The meaning of the words "the receipt and enjoyment of the rent before and up to the time of the commencement of the suit" (s. 77, Act X of 1859) explained. *UMASUNDARI DAS v. BIRBUL MUNDUL*, iii A. C. 188

7. — *Intervenor—Jurisdiction—Title.*] In a suit for recovery of arrears of rent a third party intervened, claiming a share of the rent, alleging that he had acquired a right under a decree of the Civil Court. A predecessor of the intervenor had been in possession of a share of the property; and after her death, which took place four years ago, no rent had been actually received and enjoyed by the intervenor. *Held* that, under s. 77, Act X of 1859, the claim of the intervenor could not be entertained; and that, under this section, the Court has no jurisdiction to decide the question of title. *MODHOOSOODUN BAGCHI v. RAJAH MOHES CHANDRA SINGH* — — — — — iii A. C. 203

8. — *Intervenor—Previous suit.*] The fact of an intervention under s. 77, Act X of 1859, having been disallowed in a former suit, cannot exclude the party from intervening in a subsequent suit, if he can show that he had been in the *bonâ fide* enjoyment of the rent previous to the institution of the suit. *BHAIRAO v. SHEIKH UZIRALI* — — — — — iii A. C. 373

9. — *Assignee of tenant—Intervenor—Receipt of rent.*] In a suit for arrears of rent at an enhanced rate after service of notice, the

ACT X OF 1859, s. 77—continued.

defendant alleged that he was not in possession of the tenure which had been sold by his father. The transferee was thereupon allowed to intervene under s. 77, Act X of 1859. *Held*, that he should not have been made a party; the only ground of intervention under s. 77 is, that the party who intervenes claims the right to receive the rent of the land or tenure. **DURGA NARAYAN ROY v. JAY KRISHNA MOOKERJEE** - - - - - ii S. N. i

10. — *Intervenor—Onus probandi—Appeal.*] In a suit for rent where the right to receive the rent is claimed by a third person, he must, under s. 77, Act X of 1859, prove both receipt and enjoyment of the rent as beneficial owner: and from the Collector's decision an appeal lies to the Judge under s. 155. **DOYAL KRISHNA DEB v. KALINATH KUR** - i S. N. ii

11. — *Intervenor—Title—Receipt of rent.*] Where, in a suit for rent of certain property, the plaintiff showed a recent decision of the Civil Court declaring his title to the property, and a third party intervened under s. 77, Act X of 1859, alleging that he had been in receipt of the rent,—*held*, that the plaintiff was entitled to succeed. **AMBICA CHARAN NAG v. MUSHAMUT SHIBOSUNDARI DEBI** - iii A. C. 204 note

12. — *Suit for arrears of rent—Variance between pleading and proof.*] In a suit for arrears of rent by a person alleging he was proprietor of an eight-anna share of a certain mouzah, a third party intervened, alleging he had been in possession and enjoyment of the rents of four annas portion of the share claimed by the plaintiff. The Judge found that neither the plaintiff nor the intervenor had proved possession and receipt of the four annas share in dispute. *Held*, on that finding, the Judge was bound under s. 77, Act X of 1859, to give a decree in favor of the plaintiff. **PHOOLABUTTEE KOOR v. GOPAL MUNDUL**, [xiii 244 note

13. — *Bond fide receipt and enjoyment of rent—Suit on kabuliati.*] In a suit for rent based on a kabuliati, in which the defence was raised that the kabuliati was not genuine, and in which third parties intervened under s. 77, Act X of 1859, alleging that they were in receipt and enjoyment of the rents of a portion of the estate, *held*, that the Court ought to have determined the genuineness or otherwise of the kabuliati, as a necessary preliminary to the decision as to the receipt of rent by the intervenor being *bond fide* or not. **KARTIK NATH PANDAY v. RATAN DAS**, [vi Ap. 106

—, s. 78.

See BENG. ACT VIII OF 1869, s. 52.

2. — *Suit for cancellation of lease—Condition for forfeiture.*] S. 78, Act X of 1859, applies to all cases of suits for the ejectment of a ryot or the cancelment of a lease for non-payment of rent, whether such ejectment or cancelment be sought under the provision of ss. 21 and 22 respectively, or

ACT X OF 1859, s. 78—continued.

under an express stipulation in that behalf contained in the engagement between the parties. **JAN ALI OHOWDREY v. NITTANUND BOSE** - - - - - Sup. Vol. 973

3. — *Breach of condition for forfeiture.*] Where, in a perpetual lease, there was a condition that, on default being made in payment of a certain number of instalments of rent, the lease should be void,—*held* that, in a suit under cl. 5, s. 23 of Act X of 1859, for cancellation of the lease on account of a breach of the condition, the lessee was entitled to the benefit of s. 78, even though the defence set up was false in fact. **DULICHAND v. MEHERCHAND SAHU**, xii P. C. 439 —, s. 88.

See WARRANT OF EXECUTION.

—, s. 92—*Construction of—"Issued"—Execution of decrees.*] The word "issued" in the sentence, "no process of execution of any description whatever shall be issued," at the commencement of the 92nd section of Act X of 1859, is to be interpreted to mean "sued out," or "applied for with success;" that is, no application for a process of execution shall be successful unless the application for it is made, or it is sued out within the fixed time. (Bayley and Kemp, JJ., dissenting.) **RHIDOO KRISHNA GHOSH v. KAILAS CHANDRA BOSE**, [iv F. B. 88

—, s. 105.

See SALE FOR ARREARS OF RENT.

2. — *Sale for arrears of rent.*] In a sale under s. 105, Act X of 1859, only the judgment-debtor's property can pass. **MEAH JAN MUNSHI v. KURBUNA MAXI DEBI** - - - - - viii 1

3. — *Sale of under-tenure—"Tenure," meaning of—Non-registration of names.*] By the word "tenure," as used in s. 105, Act X of 1859, is meant not the right or interest of any person in the land, but the holding or the interest which has been created by the lease, and it is the latter which is sold on a sale under s. 105. Therefore, where A., at a sale in execution of a decree for debt, bought the right, title, and interest of the holder of a transferable under-tenure, and previous to the confirmation of such sale the zamindar sued the tenant for arrears of rent, and obtained a decree, under which he sold the tenure to persons who conveyed it to B., and A., under the circumstances, neither registered the transfer to himself, nor made any deposit of rent as allowed by s. 6, Beng. Act VIII of 1865,—*held*, that he was not entitled to recover possession from B. **SHAMCHAND KUNDU v. BROJONATH PAL CHOWDHRI** - - - - - xii F. B. 484

GIRISH CHUNDER MITTER v. SHEIKH JRAKU - - - - - xii 488 note

ANUND LOLL MOOKERJEE v. KALIKA PERSAD MISSEER - - - - - xii 489 note

—, s. 142.

See WRONGFUL DISTRAINT.

ACT X OF 1859, s. 143.

*See JURISDICTION OF REVENUE COURT.
WRONGFUL DISTRAINT.*

—, s. 145.

See PENAL CODE, s. 206.

2. — *Suit—Complaint—Appeal.* A complaint under s. 145 of Act X of 1859 is not a suit, and does not fall within the description of the suit in which, under s. 160, an appeal is given to the Zilla Judge. *AMANAT-ULLAH, IN RE* - - - - - vi 569

—, s. 151.

See SUPERINTENDENCE OF HIGH COURT.

—, ss. 153, 155.

See BENG. ACT III OF 1870.

—, s. 160.

See ACT X OF 1859, s. 28 AND s. 145.

—, s. 162.

See BENG. ACT IV OF 1862, s. 20.

ACT XI OF 1859.

See SALE FOR ARREARS OF REVENUE.

—, s. 5—*Manager of estate under attachment—Sale for arrears of revenue—Portion of estate.* Act XI of 1859 is, to a great extent, a remedial Act passed for the benefit of the subject, and in order to relax the stringency of former Statutes, whereby the Crown was empowered to sell estates for non-payment of revenue. S. 5 of the said Act applies to estates which are under attachment issued under Act VIII of 1859, and which are in the hands of a manager appointed on the application of the judgment-debtor for the purpose of liquidating the debts. Such attachments are not superseded by the appointment of such manager. The words "arrears of estates under attachment" apply to cases where a portion only of an estate is under attachment, as well as to cases in which the whole estate has been attached. *BUNWARI LALL SAHU v. MOHABIR PERSAD SINGH* - - - - - xii P. C. 297

—, s. 37.

See GHATWALI TENURE.

ACT XIII OF 1859—Domestic servants—Artificers—Workmen—Labourers. Act XIII of 1859 does not apply to contracts for a "chakri," domestic or personal service, but to contracts to serve as artificer, workman, or labourer. *IN THE MATTER OF DOMESTIC SERVANTS,*

[ii A. Cr. 32

2. — *Breach of contract to supply wood.* A breach of contract to supply wood does not fall within the purview of Act XIII of 1859. *IN THE CASE OF THE UPPER ASSAM TEA COMPANY v. THOPOOR* - - - - - iv Ap. 1

ACT XIV OF 1859.

See LIMITATION ACT XIV OF 1859.

ACT XXVII OF 1860.

*See CERTIFICATE OF ADMINISTRATION.
POSSESSION, ORDER OF CRIMINAL COURT AS TO.*

ACT XXXI OF 1860, s. 32—Carrying or being in possession of arms without a licence. The mere possession of arms under Act XXXI of

ACT XXXI OF 1860, s. 32—continued.

1860 is not an offence in districts where s. 32 of the Act is not in force. *IN THE MATTER OF THE PETITION OF RAMESAR PERSHAD NARAYAN SINGH* - - - - - ix Ap. 34

ACT XLII OF 1860.

See SPECIAL APPEAL.

ACT XLV OF 1860.

See PENAL CODE.

ACT V OF 1861.

See POLICE OFFICERS.

ACT V OF 1861, ORDER UNDER.

See SUPERINTENDENCE OF HIGH COURT.

ACT IX OF 1861.

See CUSTODY OF CHILD.

ACT X OF 1861.

See WITNESSES.

ACT XXIII OF 1861, s. 2—Cost of service of process—Talabana. A plaintiff in the Moon-siff's Court filed a list of witnesses, but failed to deposit talabana, or cost of the service of summons, for their attendance. The Court failed to fix a time for the service of talabana. The processes were not served, and the Court dismissed the suit, because the plaintiff had produced no evidence in support of his claim. *Held*, under Act XXIII of 1861, s. 2, the lower Court should first have fixed a time for the deposit of talabana. Case remanded. *LALA PRASADI LAL v. LALA AMBIKA PRASAD,*

[iii Ap. 25

—, s. 8—*Application for discharge—Act VIII of 1859, ss. 273 and 280.* S. 8 of Act XXIII applies only to applications made under s. 273 of Act VIII of 1859, not to applications made under s. 280. *SMITH v. BOGGS* - - - - - v Ap. 21

2. — *Surety-bond—Execution—Act VIII of 1859, s. 204.* A surety-bond taken by the Court under s. 8 of Act XXIII of 1861, after judgment has been pronounced, can be enforced under s. 204 of Act VIII of 1859. *ABDUL KARIM v. ABDUL HUQUE KAZI* - - - - - viii 205

3. — *Arrest in execution of decree—Ground for discharge—Act VIII of 1859, s. 273—Salary.* The fact that a judgment-debtor, who has been arrested in execution of a money-decree, is in receipt of a salary, is not sufficient cause to show against his discharge under s. 8 of Act XXIII of 1861. *COOMBE v. CAW* - - - - - xiii 268

4. — *Court fees—Act VIII of 1859, s. 281.* In cases under s. 8, Act XXIII of 1861, the fee for the oath and the cost of reducing the deposition of the defendant to writing, is payable by the defendant. *EDMOND v. NIERSES,*

[viii Ap. 22

—, s. 11.

See APPEAL.

INTEREST.

MERNE PROFITS.

SET-OFF.

ACT XXIII OF 1861, s. 11—continued.

2. — *Mesne profits—Civil Procedure Code, ss. 196, 197.* According to s. 11 of Act XXIII of 1861, mesne profits payable at the time of execution must mean "mesne profits which have been at that time directed to be paid by a decree of Court." The two portions of s. 11 of Act XXIII of 1861 are in direct connection with ss. 196 and 197 of Act VIII of 1859. *HABOMOHINI CHOWDHRAIN v. DHANMONI CHOWDHRAIN* - - - 1 A. C. 128

3. — *Execution of decree—Party—Civil Procedure Code, ss. 201, 209—Representative.* In a former suit for possession of immoveable property against J. and her father, and subsequently revived against J. as the representative of her father, possession and mesne profits were decreed against J. in her representative capacity; while as against her in her individual capacity, the suit was dismissed. The decree-holder, after obtaining possession, attached and sold, in satisfaction of his decree for mesne profits, J.'s private property, notwithstanding her objections, and himself became the purchaser, but never obtained possession. This sale, ordered on the 8th October, 1863, was confirmed by the Judge on 15th March, 1864. The present suit was brought by J. for confirmation of her possession of her private property by cancellation of the execution sale. *Held* (Macpherson and Glover, JJ., dissenting), that such suit was maintainable, and that J., in her individual capacity, was not a party to the suit in which execution issued within the meaning of s. 11 of Act XXIII of 1861. *WAHED ALI v. MUHAMMUT JUMAYEE* - - - 11 F. B. 73

In the same case on appeal the decree of the High Court was affirmed under the circumstances of the case, but *held* (contrary to the opinion of the majority of the Full Bench):—Where a decree against a person in a representative capacity has been properly passed, and proceedings have been taken under it to obtain execution against the party in his representative character, he is a party to the suit with respect to any question which may arise between him and the other parties relating to the execution of the decree within the meaning of Act XXIII of 1861, s. 11. *CHOWDEY WAHED ALI v. MUHAMMUT JUMAYEE*, [xi P. C. 149]

4. — *Act VIII of 1859, s. 206—Part satisfaction of decree not certified to the Court—Suit to recover money so paid after execution of entire decree.* A., a judgment-debtor, paid to B., the decree-holder, a sum of money by way of compromise, in full satisfaction of the decree. B. failed to certify this payment to the Court, and afterwards executed her decree for the full amount. In a suit by A. against B. for recovery of the amount previously paid out of Court, in satisfaction of the decree, *held* that, notwithstanding s. 11 of Act XXIII of 1861, the suit was maintainable. *GUNAMANI DAS v. PRANKISHORI DAS* - - - v 223

ACT XXIII OF 1861, s. 11—continued.

5. — *Execution of decree for possession on compromise—Procedure.* B. sued his brother C. for possession of certain lands. B. and C. came to an amicable settlement, one of the terms of which was that C., during his life, should retain possession of certain of the lands, and that, after his death, they should pass to B. A decree was given in accordance with the terms of the compromise. On C.'s death, his widow refused to put B. in possession of the lands. B. sought to obtain possession of the lands with mesne profits by executing the decree under the compromise against C.'s widow. *Held*, that he ought to proceed by regular suit. *TARA MANI DAS v. RADHA JIBAN MUSTAFI* - - - vi Ap. 142

6. — *Execution of decree—Suit for land taken in excess of decree—Cause of action.* Where a party who has obtained a decree for land takes possession by his own act, and not by the act of the officer of Court, of more land than the decree gives him, *held*, that a suit will lie to recover back possession of any land taken in excess of the decree. *MUDUN MOHUN SINGH v. KANYEE DOSS CHUCKERBUTTY*, xii 201

7. — It should be distinctly found in such a case how the dispossession occurred, whether through the Court or by the act of the defendant himself. *SURUT SOONDREY DABEE v. ONWAR NARAIN PERSAD DEY* - xii 207 note

8. — *Execution of decree—Land taken in excess, suit to recover.* In execution of a decree for the recovery of certain lands from the plaintiff within specified boundaries, the defendant took possession of land as being covered by the decree, the possession being given him by an officer of Court. Thereafter the plaintiff preferred a complaint that the defendant had taken illegal possession, as the land was not covered by the decree; but the Court rejected his application. The plaintiff then brought a suit to recover possession of the lands which he alleged had been wrongfully taken under the defendant's decree. *Held*, that the suit would not lie. The matter was a question arising between the parties relating to the execution of the decree, under s. 11, Act XXIII of 1861, and should, therefore, have been the subject of an application to the Court which made the decree. *JOGENDRO NARAIN COOMAR v. RANEE SUKUMOYEE*, [xii 203 note]

9. — *Decree wrongly executed—Trespass, suit for.* Where, in execution of a decree, something is done which is not ordered by the decree, as making breaches in a bund which were thought by the nazir necessary for the protection of the bund, a suit will lie for trespass committed thereby. It is not a question arising in execution of a decree under s. 11, Act XXIII of 1861. *RASH BEHARY LALL v. BIBEE WAJAN* - - - xii 208 note

See also *SUBJAN BIBEE v. SHEIKH SARIAT-ULLA* - - - iii A. C. 413

ACT XXIII OF 1861, s. 11—continued.

10. — *Execution of decree—Assignment of decree.*] A., a decree-holder, applied for execution of his decree, but was opposed by B., the judgment-debtor, on the ground that A. had sold his decree to a third party from whom it had passed to B.'s son. *Held*, that this was a question arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree, and might be determined by the Court executing the decree, under s. 11, Act XXIII of 1861. **RAMDHAN RAKHIT v. PANCHANAN CHUCKERBUTTY** — — — — — 1 S. N. ix

11. — *Payment—Decree subsequently reversed or modified.*] When money has been taken in execution of a decree which is subsequently reversed or modified, no fresh suit will lie for its recovery; the matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree. **SALIGRAM SING v. GOBIND SAHAI** — — — — — iv Ap. 64

12. — *Right of action—Act VIII of 1859, s. 270—Rival decree-holders.*] A regular suit will lie at the instance of one decree-holder against another for a refund of money that has been erroneously paid away to the latter contrary to the provisions of s. 270 of Act VIII of 1859. **GOGARAM v. KARTICK CHUNDER SINGH** — — — — — Sup. Vol. 1022

13. — *Suit for money paid in execution of decree—Parties appearing on decrees not parties to suit.*] S. sued K. for possession of certain land, and H., claiming to be owner of the property, asked leave to come in and defend the suit; but his application was refused. The suit was dismissed, and S. appealed, naming H. as a respondent, and a notice in usual form was served on H. He, however, did not appear, and the decree of the first Court being reversed, a decree, in which H. was included, was given for possession. H. subsequently brought a suit to have his title to the property declared, making S. a defendant, and obtained a decree declaring his title. Pending H.'s suit S. took proceedings in execution of the decree to recover a sum awarded her either as costs or means profits, whereupon H. to prevent a sale of the property, deposited the amount in Court, and S. received it on account of her decree. In a suit brought by H. against S. to recover the amount so paid, *held*, the plaintiff was entitled to recover. The judgment in the first suit having been set aside by the proceedings in the second suit, there was no bar to the suit by reason of the money having been paid in execution of the process of the Court. H. was not a party to the first suit so as to make the question one between the parties, and relating to the execution of the decree. **SHEROKUMARI DEBI v. SHITARAM HAYDRA** — — — — — xiii Ap. 17

—, s. 14 — *Pre-emption.*] S. 14 of Act XXIII of 1861 is not applicable to permanently-settled estates in Sylhet, nor to estates in any district of Bengal, unless extended thereto. **ABDUL JABEL v. KHELAT-CHUNDER GHOSE** — — — — — i A. C. 105

ACT XXIII OF 1861, s. 15—*Execution of decree—Act VIII of 1859, s. 214—Investigation of title.*] Neither s. 214, Act VIII of 1859, nor s. 15, Act XXIII of 1861, contemplate any inquiry before the Court whether the property belongs to the judgment-debtor or not. **SUBJAN BIBI v. SHEIKH SARIATULLA**, [iii A. C. 413

—, s. 23.

See LETTERS PATENT, CL. 15.

—, s. 27.

See SPECIAL APPEAL.

SUPERINTENDENCE OF HIGH COURT.

—, s. 35—*Appeal preferred in Court having no jurisdiction—Extension of time for appealing—Superintendence of High Court.*] When an appeal had been preferred by the plaintiff to the Judge which ought to have been preferred to the Collector, the Court made an order giving the plaintiff thirty days within which to prefer his appeal to the Collector instead. **ADHIRANI NARAIN KUMARI RAJRANI OF BURDWAN v. PURIKHIT RAWTRA**, vii Ap. 15

2. — *Act X of 1859, s. 108—Sale by Deputy Collector—Appeal.*] A Deputy Collector sold an under-tenure in execution of a decree for rent. An appeal was made to the Collector on the ground that the tenure could not be sold unless execution had been previously issued against the moveable property of the judgment-debtor. The Collector affirmed the decision of the Deputy Collector, but on review set aside his former order, on the ground that he had no jurisdiction, the sale having taken place under the provisions of Act X of 1859. An application was made to the High Court under s. 35 of Act XXIII of 1861 to set aside the order of the Collector, on the ground that the Collector had no power to review his own judgment, and consequently his first order stood, which the High Court ought to set aside, and pass such order as it might think right, and reverse the order of the Deputy Collector. The question was referred to a Full Bench, whether s. 35 applied to the order of the Collector. The Full Bench refused to consider the question referred, on the ground that it was the intention of Act X of 1859 that the sale by the Deputy Collector should be final. **IN THE MATTER OF THE PETITION OF DUCOWRI KAZI** — Sup. Vol. 517

3. — *Construction of—Superintendence of High Court.*] The true construction of s. 35 of Act XXIII of 1861 is, that the High Court may call for the record in any case in which a subordinate Court exercises a jurisdiction when it has none, or exceeds it when it has jurisdiction. The words in s. 35 "the Sudder Court may set aside the decision passed on appeal in such case by the subordinate Court, or may pass such other order in the case as to such Sudder Court may seem right," mean that, where a Court exceeds its jurisdiction, the High Court may set aside that part of the order which is in excess of jurisdiction, and that, where the decision of the subordinate Court is made on appeal in a case

ACT XXIII OF 1861, s. 35—continued.

in which it has no appellate jurisdiction, the proper order is to set aside the decision altogether. If an appeal be heard by a subordinate Court which has no jurisdiction to hear it, when it ought to be heard by another subordinate Court which has jurisdiction to hear it, the Court may set aside the decision of the Court which had no jurisdiction, and may, if it think right, refer the case to the Court which had jurisdiction, even if it be too late to prefer a fresh appeal to that Court. The Judge having entertained an appeal where none lay, is no ground for interfering with a decision which the Legislature intended to be final. *Jackson, J.*, differed. **IN THE MATTER OF THE PETITION OF SUBJAN OSTAGUR** - - - *Sup. Vol. 531*

—, s. 37—*Appeal*—“*Powers*”—“*Jurisdiction*.”] S. 37 of Act XXIII of 1861 does not apply to cases where the subject which is being dealt with by the Court is not the actual appeal itself, and cannot, therefore, be rightly treated as standing in an analogous position to that of the original suit itself; and further that the same section has not the effect of making s. 7 of the same Act applicable to cases where the Appellate Court has passed an order under ss. 5 and 6, dismissing the appeal. *Sembla*.—The word “powers” in s. 37 of Act XXIII of 1861 is not synonymous with, and does not comprehend, “jurisdiction.” **KALIKRISHNA CHANDRA v. HARIHAR CHUCKERBUTTY** - - - *1 A. C. 155*

ACT IV OF 1862, s. 10.

See BANK OF BENGAL.

ACT X OF 1862.

See STAMP.

—, ss. 15 and 17.

See APPELLATE COURT.

ACT IV OF 1862, s. 1.

See SENTENCE.

ACT XVIII OF 1862, s. 41.

See ARREST OF JUDGMENT.

ACT XX OF 1863—*Suit for declaration of trusts of a temple.*] In bringing a suit under Act XX of 1863 it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue. The Act applies to property in Calcutta. **GANES SING v. RAMGOPAL SING** - - - *7 Ap. 55*

—, ss. 4, 7, and 18—*Wakf*—*Public and private endowments*—*Reg. XIX of 1810*—*Jurisdiction of Civil Court*—*Suit to remove Mutwalli.*] *A.*, a Mahomedan lady, executed a wakfnama purporting to dedicate the whole of her property to an imambara in her house, for the purpose of perpetuating various Shiah ceremonies. By the wakfnama she constituted herself joint-mutwalli with one *B.*, and caused the names of herself and *B.* as mutwallis to be substituted in the Collector's register for her own name as owner. On the death of *B.*, *A.* acted as the sole mutwalli. The wakfnama was publicly registered. But though the property was styled ‘wakf,’ and *A.* the mutwalli thereof, in all

ACT XX OF 1863, ss. 4, 7, and 18—continued.

documents connected with the estate, *A.* all along continued to deal with it as absolute proprietress, and the dedication, though made in 1852, was never under the control of the Board of Revenue or of local agents. In a suit, which the plaintiffs obtained leave to institute under s. 18 of Act XX of 1863, to remove *A.* from the mutwalliship, on the ground of misfeasance, *held*, the wakfnama did not constitute a public religious establishment within the meaning of Act XX of 1863, and that, therefore, the Judge below had no authority to give the plaintiffs, under s. 18, leave to sue; and that his decision was consequently *ultra vires*. S. 18 of Act XX of 1863 applies only to such religious establishments as were under the control or superintendence of the Board of Revenue or of local agents under Reg. XIX of 1810, and were transferred to trustees or managers under s. 4 of the Act. **DEBBOOS BANOO BEGUM v. NAWAB SYUD ASHGAR ALLY KHAN** - - - *xv 167*

ACT XXI OF 1863.

See RECORDER'S ACT.

SMALL CAUSE COURT, RANGOON.
SUPERINTENDENCE OF HIGH COURT.

ACT VI OF 1864.

See WHIPPING.

ACT XVI OF 1864.

See REGISTRATION ACT XVI OF 1864.

ACT XXVI OF 1864.

See SMALL CAUSE COURT, PRESIDENCY TOWNS.

—, s. 9.

See CONTRACT ACT, s. 27.

COSTS.

SMALL CAUSE COURT, PRESIDENCY TOWNS.

ACT X OF 1865.

See SUCCESSION ACT.

ACT XI OF 1865.

See SMALL CAUSE COURT, MOFUSSIL.
SMALL CAUSE COURT, RANGOON.

—, s. 6.

See SPECIAL APPEAL.

—, s. 21.

See LIMITATION.
REVIEW.

ACT XIII OF 1865.

See ASSESSOR.

OFFENCE COMMITTED ON THE HIGH SEAS.

ACT XX OF 1865.

See MOOKTEAR.
PLEADER.

ACT X OF 1866.

See COMPANY.

ACT XX OF 1866.

See REGISTRATION ACT XX OF 1866.

ACT X OF 1867, s. 1.

See SMALL CAUSE COURT, MOFUSSIL.

ACT XIII OF 1867, ss. 20 and 30—Criminal Procedure Code (Act XXV of 1861), s. 404—Distribution of fine—Possession of opium.] Upon the conviction of certain persons under s. 20, Act XIII of 1867, for illicit possession of opium, the Magistrate sentenced them to payment of a fine, and directed that, upon the realization thereof, one-half should be paid to the Inspector of Police who had apprehended the prisoners, but refused to pay the other half in accordance with s. 30 (for reasons set forth in his order) to the person who gave the information. On a reference by the Sessions Judge to the High Court,—*held*, the High Court could not interfere under s. 404 of the Code of Criminal Procedure. The distribution of the fine under s. 30, Act XIII of 1867, formed no part of the Magistrate's judgment. **QUEEN v. RAMDYAL SING** - viii Ap. 7

ACT XXIV OF 1867.
See ILLEGITIMACY.

ACT XXVI OF 1867.
See STAMP ACT XXVI OF 1867.
VALUATION OF SUIT.

ACT IX OF 1868—Certificate tax—Neglect to take out certificate—Fine.] The fine imposed under s. 17, Act IX of 1868, for neglect to take out a certificate, must not be less than twice the amount for which such certificate should be taken out. **QUEEN v. RAM GOBIND CHUCKERBUTTY** - - - ii Ap. 40

ACT XIV OF 1868.
See PROSTITUTE.

ACT IV OF 1869.
See DIVORCE ACT.

ACT XV OF 1869.
See PRISONERS' TESTIMONY ACT.

ACT XVIII OF 1869.
See STAMP ACT XVIII OF 1869.

ACT X OF 1870.
See LAND ACQUISITION ACT.

ACT XIV OF 1870 (Repealing Act, 1870), s. 1—Procedure of High Court.] Act XIV of 1870 (the Repealing Act, 1870) does not affect the procedure of the High Court. **RAM CHUNDER v. CHOONHEAL** - - - xii 35

ACT XXI OF 1870.
See PROBATE.

ACT XXVII OF 1870, s. 10, 294 A—Lottery office—Institution of criminal proceedings—Sanction of Government.] No charge for the offence (of keeping a lottery office) under s. 10, Act XXVII of 1870, 294A, can be entertained without the authority of the Local Government. **QUEEN v. NGA CHO** - vi Ap. 98

ACT I OF 1871, s. 19.
See PENAL CODE, ss. 405, 406.

ACT VIII OF 1871.
See REGISTRATION ACT VIII OF 1871.

ACT IX OF 1871.
See LIMITATION ACT IX OF 1871.

ACT I OF 1872.
See EVIDENCE ACT.

ACT X OF 1873.
See OATHS ACT.

ACT III OF 1874.
See SUCCESSION ACT, s. 4.

ACT X OF 1875.
See HIGH COURTS' CRIMINAL PROCEDURE ACT.

ACTS OF PARTIES AS EVIDENCE OF THEIR INTENTION.
See ESTOPPEL.

ADDITION OF WORDS TO CONTRACT AFTER SIGNATURE.
See CONTRACT.

ADDITIONAL JUDGES.
See BENG. ACT VIII OF 1869, s. 102.

ADJOURNED HEARING.
See CIVIL PROCEDURE CODE, s. 111.

ADJOURNMENT FOR CONVENIENCE OF COUNSEL.
See PRACTICE.

ADJUSTMENT OF CLAIMS.
See DEBTOR AND CREDITOR.

ADMINISTRATION.
See CERTIFICATE OF ADMINISTRATION.
LETTERS OF ADMINISTRATION.

ADMINISTRATION, SUIT FOR.
See CIVIL PROCEDURE CODE, s. 34.

2. — *Petition for Administration Summons—Plaint.*] A petition for an administration summons may be ordered to be taken as a plaint, and as the foundation of an administration suit. **IN THE MATTER OF THE ESTATE OF SAMUEL FENN. MACKINTOSH v. WILKINSON** [iii Ap. 3

3. — *Dividend in respect of debt against the estate—Proof of debt—Date from which amount of debt is to be estimated.]* In the administration by the Court of the estate of a deceased, the dividend in respect of a debt against the estate is to be estimated on the amount of the debt at the date of the order for payment, and not at the date of proof. **AGRA AND MASTERMAN'S BANK v. ROBINSON. IN THE MATTER OF THE LAND MORTGAGE BANK OF INDIA** - - - vi Ap. 140

4. — *Suit by creditor—Misjoinder—Multi-farioneness—Practice.]* The principle of the rules that the creditor of a deceased person suing for administration is in the same situation with regard to all other persons as if he were bringing an action at law against the administrator, and that a debtor to the estate of a deceased person can only be made answerable as such debtor by the representative of the deceased's estate, is to be adhered to in this country, where there is a different procedure. Therefore, where, to a suit brought against the Administrator-General as administrator of the estate of one *W. B.* by a creditor of the deceased, other persons who also had a claim against the estate were made defendants, on the allegation that they had realised and were in possession of assets of the estate of the deceased,—*held*, that there being nothing to

ADMINISTRATION, SUIT FOR—continued.

show that such persons were in the position of an executor or administrator *de son tort*, or that they had been partners with the deceased, or that they could not be sued, if necessary, by the legal representative himself, and there being no other circumstances which would make it equitable that they should be sued jointly with the legal representative, they were wrongly made parties, and the suit ought to be dismissed as against them for misjoinder. Even assuming the facts were such that the plaintiff was entitled to sue them as legal representatives of the estate, he should not mix his own claim with that which the Administrator-General might have against them. *DHUNRAJ v. BROUGHTON* - xv 296

5. — *Subsequent suit to set aside sale by executor.*] A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will, by whom the sale had been made, held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside. *DHONENDRO CHUNDER MOOKERJEE v. MUTTY LALL MOOKERJEE* - xiv P. C. 276

ADMINISTRATOR, DECREE AGAINST.

See SUCCESSION ACT, s. 282.

ADMINISTRATOR-GENERAL.

See ILLEGITIMACY.

ADMINISTRATOR-GENERAL'S ACT.

See ILLEGITIMACY.

ADMIRALTY ACTS.

See JURISDICTION, ADMIRALTY.

ADMIRALTY COURT, PRACTICE OF.

See SHIP, ARREST OF.

ADMISSIBILITY OF EVIDENCE.

See EVIDENCE.

REGISTRATION.

STAMP.

ADMISSION.

See ESTOPPEL.

EVIDENCE ACT I OF 1872.

ONUS PROBANDI.

PRINCIPAL AND AGENT.

VARIANCE BETWEEN PLEADING AND PROOF.

2. — *Suit to set aside deeds—Petition.*] Defendant claimed to hold a mokurree tenure under deeds executed by plaintiff, zamindar. The plaintiff denied the authenticity of the deeds, and sued to set them aside. The lower Courts dismissed his suit as barred by limitation, on the ground that plaintiff had, in a petition before the Collector, admitted that defendant was mokurreeedar of the tenure, and that this being so limitation ran against him from the date of the deeds. *Held*, that the case should have been tried on the merits, as the petition was not a conclusive admission of the genuineness of the deeds, and it was not right to infer from it that plaintiff knew of their existence at the time of their professed date. *RAJAH SABIB PROHLAD SEN v. RUN BAHADUR SINGH* - ii P. C. 111

ADMISSION—continued.

3. — *Written statement—Qualified statement.*] *Per* MACPHERSON, J.—The opinion of the Full Bench in *Pulin Beharee Sen v. Watson* was that, if a party makes a qualified statement, that statement cannot be used against him apart from the qualification; not that if a man makes a series of independent unqualified statements, those statements cannot be used against him. That case goes no further than to lay down, that an unfair use is not to be made of a man's written statement, by trying to convert into an admission by him that which he never intended to be an admission. *BAIKANTANATH KOOMAR v. CHANDRA-MOHAN CHOWDHRY* - i A. C. 133

See *PULIN BEHAREE SEN v. WATSON*.

[Sup. Vol. 904.]

4. — *Pleadings—Admission by one of several defendants—Relinquishment—Disclaimer of title.*] *R.*, holding estates in Bengal jointly with his brothers as an undivided Hindu family, died leaving a widow *S.* and three unmarried daughters *B.*, *S. M.*, and *N.* On her husband's death *S.* continued to reside with his brothers, and was supported out of the income of the joint estate. All the daughters married in the lifetime of *S.*, and *B.* became a widow without having had a child. After the death of *S.*, and in the lifetime of *S. M.*, *N.* also became a childless widow. *S. M.* died after her mother leaving a son, *R. K. R. K.*, on attaining majority, sued to recover, with meane profits, a 4-anna share of the ancestral estates to which he claimed to be entitled on his mother's death as heir of *R.*, and from which he alleged he had been dispossessed by the representatives of *R.*'s brothers, whom he made defendants in the suit, joining *B.* and *N.* with them as co-defendants. Some time after the institution of the suit, a petition was filed purporting to proceed from *B.* and *N.*, by which they admitted that the plaintiff was the heir of *R.*, and that they had no defence to offer. *Held*, that *N.* being the heir of *R.*, *R. K.* had not, during her lifetime, any right to any part of the estate, and that his position was not altered by the petition, purporting to proceed from *B.* and *N.*, such petition not amounting to a conveyance or disclaimer of title in his favor. In the English Common Law Courts, and, *a fortiori*, in the Courts of Law in India, where the pleadings are less technical, an admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tantamount to proof of the fact. An admission or even a confession of judgment by one of several defendants in a suit is no evidence against another defendant. *AMRITOLAL BOSE v. ROJONEEKANT MITTER*, [xv P. C. 10]

5. — *False statement by defendant.*] A plaintiff cannot take advantage of a statement made by a defendant which at most amounts to a piece of evidence, and not to an admission, but which is found to be untrue,

ADMISSION—continued.

unless it be shown that the status of the plaintiff had been affected, or that he had been misled by such statement. *GRISH CHANDRA GHOSH v. ISSAR CHANDRA MOOKERJEE* - iii A. C. 337

6. — *Suit for resumption of lands—Previous suit to assess the lands—Evidence.* An admission by a jagirdar in a suit brought by Government to assess the lands, that the lands were comprised in a zamindari, is evidence of that fact in a suit by the zamindar to resume those lands. *FORBES v. MIR MAHOMED TAKI*. [v P. C. 599]

7. — *Joint family—Misrepresentation.* In a suit by a member of a joint family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of R., one of the members of the family, for his separate debt, the defendant alleged, as showing the property was the separate property of R., that, on one occasion, when R. B., the *karta*, and a third member of the family, entered into a security bond with the Collector, whereby R. pledged the property in suit, and the two others pledged other properties, each of them described the property pledged by him as being in his possession "without the right of any co-sharers." *Held*, that the misrepresentation as to his separate ownership made by R. in the security-bond given to the Collector could not be regarded in the present suit as more than an admission inconsistent with the title now asserted by the plaintiff, the defendant not having purchased on the faith of such misrepresentation. *BOODH SINGH DHODORIA v. GUNESH CHUNDER SEN* - xii P. C. 317

ADOPTION.

See HINDU LAW, ADOPTION.

ADOPTION, DOUBLE.

See HINDU LAW, WILL.

ADOPTION, SUIT TO SET ASIDE.

See DECLARATORY DECREE, SUIT FOR. LIMITATION ACT XIV OF 1859, s. 1, CLS. 12 AND 16.

ADULTERY.

See DIVORCE ACT.

ADULTERY OF PARTNER WITH WIFE OF CO-PARTNER.

See PARTNERSHIP.

ADVERSE POSSESSION.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 12. TRUSTEE AND CESTUI QUE TRUST.

ADVOCATE.

See COUNSEL. WITNESSES.

2. — *Right to appear—Criminal Courts—Prosecution—Pleader.* A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts. *CHANDI CHARAN CHATTERJEE v. CHANDRA KUMAR GHOSH* - - - - - v Ap. 70

ADVOCATE—continued.

3. — *Right to appear—Appeal from mofussil—Non-intervention of vakel or attorney.* An advocate of the High Court may appear at the hearing of an appeal from the mofussil on the direct instruction of a client, and without the intervention of vakel or attorney. *GOBIND CHUNDER DUTT v. HENDRY*, [xiv Ap. 13]

4. — *Suspension from practising—Malus animus—Ground for suspension.* An order of a High Court suspending a barrister from practice for five years set aside, on the ground that, although there had been grave irregularity, there was no *malus animus* to show an intention to commit a fraudulent act. *IN RE NEWTON*, [x P. C. 88]

AFFIDAVIT, FILING OF.

See PRACTICE.

AFFIDAVIT, SUFFICIENCY OF.

See RULE TO SHOW CAUSE.

AFFIDAVITS, CONTRADICTORY.

See INJUNCTION.

AGE OF MAJORITY.

See MAJORITY, AGE OF.

AGENT.

See CIVIL PROCEDURE CODE, s. 17. PRINCIPAL AND AGENT.

AGENT, AUTHORITY OF.

See COMPANY.

AGREEMENT AS TO MODE OF FIXING BOUNDARIES.

See ACCRETION.

AGREEMENT DEFINING SHARES IN IMMOVABLE PROPERTY.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 12.

AGREEMENT NOT TO ALIENATE.

See MORTGAGE.

AGREEMENT NOT TO APPEAL.

See APPEAL TO PRIVY COUNCIL. COSTS. COUNSEL.

AGREEMENT NOT TO PARTITION.

See HINDU LAW, PARTITION.

AGREEMENT TO ABIDE BY PROCEEDINGS CONTRARY TO THE ORDINARY CURSUS GURLE.

See ESTOPPEL.

ALIENATION.

See ATTACHMENT. CIVIL PROCEDURE CODE, s. 240. HINDU LAW, ALIENATION.

ALIENATION BY GRANTEE.

See RESUMPTION.

ALIENATION OF ANCESTRAL PROPERTY, SUIT TO SET ASIDE.

See PARTIES.

ALIENATION, PROHIBITION AGAINST.

See WILL.

ALIMONY.

See DIVORCE ACT.

ALLOUGE.

See GOVERNMENT PROMISSORY NOTE.

ALTERATION OF CONTRACT AFTER SIGNATURE.

See CONTRACT.

ALTERNATIVE CHARGE.

See FALSE EVIDENCE.

ALTERNATIVE STATEMENT.

See FALSE EVIDENCE.

AMEEN.

See CIVIL PROCEDURE CODE, s. 180.

2. — *Local investigation — Act VIII of 1859, s. 180.* Functions of an Ameen appointed to hold a local investigation, under s. 180, Act VIII of 1859, discussed. ISWARCHANDRA DAS v. JUGAL KISHOR CHUCKERBUTTY, [iv Ap. 38]

3. — *Local investigation — Suits for enhancement of rent—Power of Ameen to examine witnesses—Act VIII of 1859, s. 180.* In suits for enhancement of rent it is a proper course of procedure to appoint an Ameen to make a local investigation in order to enquire as to the description of the land and as to the rates paid in the neighbourhood for similar land, and the Ameen has power, under s. 180, Act VIII of 1859, to examine witnesses in the matter. GAUR CHANDRA ROY v. RASHEBHARI DUTT — — — — — i S. N. i

4. — An Ameen appointed to hold a local investigation has power to examine witnesses relative to the matter he has to enquire into; but the Munsif has no power to direct the Ameen to try the whole case: when this course was adopted, the High Court expressed their disapproval of such a practice, and remanded the case to the Munsif for retrial. RAGHUNATH SHAW v. RAJKRISHNA DEB — — — — — i S. N. ii

AMEEN, REPORT OF.

See EVIDENCE.

ANCIENT RIGHT.

See PRESCRIPTION.

ANTICIPATION, RESTRAINT ON.

See SUCCESSION ACT, s. 4.

APOSTATE FATHER.

See MAHOMEDAN LAW, MARRIAGE.

APPEAL.

See ACT XXIII OF 1861, s. 35.

APPEAL IN CRIMINAL CASES.

APPEAL TO PRIVY COUNCIL.

BENG. ACT III OF 1870.

INJUNCTION.

LAND ACQUISITION ACT.

LETTERS PATENT, CL. 15.

RECORDERS' ACT.

REVIEW.

2. — *Civil Procedure Code (Act VIII of 1859), s. 243—Order postponing sale—Act XXIII of 1861, s. 11.* An appeal lies from an order passed under s. 243 of Act VIII of 1859, postponing the sale of the property attached, in order to enable the judgment-debtor to raise the amount of the decree against him (JACKSON, J. dissenting). HANUMAN PRASAD v. AJODHYA PRASAD — — — — — i F. B. 7

APPEAL—continued.

3. — *Civil Procedure Code (Act VIII of 1859), s. 347—Order rejecting application for re-admission of appeal.* No appeal lies against an order rejecting an application for the re-admission of an appeal under s. 347, Act VIII of 1859. AMIRUDDIN v. JIBAN BIBEE — i F. B. 101

4. — *Talabana, failure to deposit—Application for review of judgment.* A. filed a memorandum of appeal, but failed to deposit the sum required to defray the cost of issuing the usual notice on the respondent. When the case came on for hearing, it was found that, in consequence of A.'s failure to deposit, no notice had been served on the respondent; and the Judge dismissed the appeal under s. 6 of Act XXIII of 1861. Within 30 days after this, A. presented a petition, explaining the reasons of his default, and praying that, on payment of the talabana, the appeal might be restored to its place; but the Judge, without considering the reasons which A. had given in his petition, disallowed his prayer. Held, that no appeal lay from the order of the Judge rejecting A.'s petition, which was of the nature of an application for a review of judgment. KALIKRISHNA CHANDRA v. HARIHAR CHUCKERBUTTY — — — — — i A. C. 155

5. — *Award—Order rejecting application to file—Act VIII of 1859, s. 327.* No appeal lies from an order rejecting an application to file an award (MITTER, J., *dubitante*). ROY PRIYANATH CHOWDHRY v. PRISONNOCHUNDER ROY CHOWDHRY — — — — — ii A. C. 249
CHINTAMAN SING v. MUSST. UMA KUNWAR, [Sup. Vol. 505]

6. — *Award—Act VIII of 1859, s. 327.* In an arbitration case between a mahajun and his gomasta, an award was made to the effect that Rs. 725 were outstanding and due to the kuti, of which Rs. 483 were due to the mahajun and Rs. 241 to the gomasta; and that the gomasta should point out the parties owing the Rs. 483, or in default make good the amount. The mahajun applied to the Subordinate Judge of Bhaugulpore, under Act VIII of 1859, s. 327, to file the award. The Subordinate Judge held that it was not proved that the gomasta had done as required by the award, and ordered him to pay the deficit. The gomasta appealed to the Judge, who held that no appeal lay from the judgment of the Subordinate Judge enforcing the award. Held on special appeal, that the Subordinate Judge's judgment decided a question of fact not determined by the award, and that an appeal would lie. RAM-BHANJAN BHUKUT v. SRIKISHEN BHAKAT, [ii A. C. 260]

7. — *Award—Act VIII of 1859, ss. 325 and 327.* An application was made under s. 327 of Act VIII of 1859 to file an arbitration award, and the Court, after calling on the opposite party to show cause why it should not be filed, rejected the application. Held, that the case did not come within the meaning of s. 325, and that the order being simply one "rejecting an application to file an award,"

APPEAL—continued.

was final. **RAJKUMAR SING v. KALI CHARAN SING** - - - - - i Ap. 20

8. — *Arbitration award — Act VIII of 1859, s. 325.* [An appeal lies from an order enforcing execution of an arbitration award, or from a decree under s. 325 of Act VIII of 1859] **WALI ALAM v. BIBI NASRAN** - - - iii Ap. 104

9. — *Arbitration award — Act VIII of 1859, ss. 325, 327—Finality of decree.* [On the application of one party to a reference to arbitration, without the intervention of a Court, to have the award filed and for judgment thereon, an objection of the other party that the award had been come to after the arbitrators' authority had been repudiated, was overruled, and judgment was passed by the Munsif in accordance with the award. *Held* (PAUL, J., dissenting), an appeal lay from the decision of the Munsif. In another case the question was referred to a Full Bench, whether, when an award has been ordered to be filed, and judgment has been given in accordance with it, under s. 327 of Act VIII of 1859, is such judgment open to appeal? The answer given (PAUL, J., dissenting) was:—It is open to an appellant to show that the paper which has been filed is not an award. If it is an award, and judgment is given in accordance with such award, such judgment is final. *Per* PAUL, J.—The judgment is final. **SASHTI CHARAN CHATTERJEE v. TARAK CHANDRA CHATTERJEE, and LALA ISHWARI PRASAD v. BIR BHANJAN TEWARI**, [viii F. B. 315]

10. — *Arbitration—Finality of decree—Award, judgment according to—Act VIII of 1859, ss. 324 and 325.* [A suit in the Munsif's Court was, after issues had been settled and evidence on such issues adduced by both parties, referred by consent of parties to arbitration. The arbitrator made his award, and on the next day an order was recorded by the Munsif that the parties were to file their objections to the award in one day, notwithstanding that s. 324, Act VIII of 1859, allows the parties ten days for such purpose. The plaintiffs, in accordance with that order, filed a petition of objection to the award, and an order was endorsed by the Munsif on this petition, that it should be laid before the Court with the papers of the arbitrator. The Munsif then gave his judgment, in which he went into the evidence, and, overruling the objection of the plaintiffs, gave a decision on the merits, which decision was in accordance with the award. *Held*, that such judgment, though in accordance with the award, was not final under s. 325 of Act VIII of 1859, but was open to appeal. In order to make it final, it should appear that all the proceedings have been regular, and the directions of Act VIII of 1859 complied with. **GUNGA NARAIN GHOSE v. RAM CHAND BOSE** - - - - - xii 48

11. — *Arbitration — Act VIII of 1859, s. 325.* [Judgment under s. 325, Act VIII of 1859, if given according to the award, is final; but such judgment to be final must be one in

APPEAL—continued.

accordance with the provisions of s. 325, and where the Judge gave judgment without allowing sufficient time for objections to be made to the award or for the award to be set aside, the judgment was *held* to be not one within s. 325, and, therefore, subject to appeal. **JAYMANGAL SINGH v. MOHANRAM MARWARI**, [viii 319 note]

12. — In a suit in the Munsif's Court seven issues were fixed for determination, and the suit was then referred by agreement to three arbitrators. In coming to an award the arbitrators took up specifically some of the issues framed in the Munsif's Court, and declined to enter into others. They determined the matter in issue between the parties, and the award was signed by the three arbitrators. Two of the arbitrators subjoined to the award a suggestion which, if acted on, would prevent the necessity of carrying out the award. The Munsif dealt with this suggestion as surplusage, and gave the plaintiff a decree in accordance with the award signed by the three arbitrators. In appeal it was contended that the award was not a legal one, and it was sought to set the decree of the Munsif aside; but the Judge found that the decree was in accordance with the award, and that he was precluded by s. 325 from disturbing the decision of the Munsif. On special appeal it was contended that the award was incomplete as all the issues were not decided, and that the decree was not in accordance with the award as it did not embody the suggestion of the two of the three arbitrators. *Held*, that the decree was in accordance with the award, and was, therefore, final under s. 325. **SARBOREE KANTO BHUTTACHARJEE v. ANADYA KANTO BHUTTACHARJEE** xii Ap. 10
MADHUSUDAN DAS v. ADOITO CHARAN DAS, [viii 316 note]

13. — A suit was referred by the Munsif to arbitration under s. 315, Act VIII of 1859. The arbitrators were of opinion that the case of the plaintiff was fictitious, but nevertheless gave an award in his favor. The Munsif refused to uphold the award, on the ground that the arbitrators had been guilty of misconduct in giving an award contrary to the evidence. The Judge reversed their decision, on the ground that the Munsif had no jurisdiction to refer to the evidence taken before the arbitrators in order to determine whether they were guilty of misconduct or not: he gave judgment in accordance with the award. *Held*, that his decision was not final under s. 325, Act VIII of 1859: the provisions of that section refer only to the Court by which the case is referred to arbitration. The Munsif was entitled to refer to the evidence before the arbitrators in order to determine whether they had misconducted themselves or not. **PARSHNATH DEY v. NABIN CHANDRA DUTT** - - - v Ap. 77 note

14. — *Execution of decrees — Act XXIII of 1861, s. 11.* [The Munsif, on the application of a judgment-debtor, set aside a sale held in execution of a decree passed against

APPEAL—continued.

him, on the ground that the decree was barred by lapse of time. The judgment-creditor appealed to the Judge, who rejected the appeal on the ground that no appeal was allowed from such an order. *Held* in special appeal, that, under s. 11 of Act XXIII of 1861, an appeal lay from the order of the Munsif. **DHAN BIBEE v. HARADHAN RAM** - - - ii Ap. 11

15. — *Act XXIII of 1861, s. 11—Execution of decree—Limitation—Representatives of deceased debtor.* A decree was obtained in 1849, and execution issued in 1862. Several subsequent applications for execution were made, against one of which the objection was raised by some of the representatives of the judgment-debtor, that the decree was barred by lapse of time; but it was overruled by the High Court in special appeal. A further application was made, and was opposed by one of the representatives who had since attained his majority, upon the ground that the suit was barred. The Munsif disallowed the objection. On appeal the Judge reversed his decision. *Held* in special appeal, that the terms of s. 11, Act XXIII of 1861, do not prohibit an appeal by a representative of a deceased judgment-debtor against an order passed in execution of a decree against his ancestor. **BISHTU NARAYAN BANDOPADHYA v. GANGA NARAYAN BISWAS** - - - iii A. C. 40

16. — *Act XXIII of 1861, s. 11—Act VIII of 1859, s. 208—Assignment of decree.* Under s. 11, Act XXIII of 1861, no appeal lies from an order passed under s. 208, Act VIII of 1859, substituting the assignee of a decree in the place of the original decree-holder. **MEGH NARAYAN SING v. RADHA PRASAD SING** - - - - - iv A. C. 200

17. — *Surety—Execution of decree—Act VIII of 1859, ss. 204 and 363—Act XXIII of 1861, ss. 11 and 36.* Where a person becomes a surety in the course of the proceedings on an appeal, to pay all such sums as may be decreed against the plaintiff on appeal, the decree, when passed, can be executed against the surety under s. 204 of the Civil Procedure Code, and an appeal will lie from an order made in execution of such decree against the surety. **AKHUT RAMANA v. AHMED YOUSAFFJI** - - - - - vii 81

18. — *Assignment of interest in subject-matter of suit—Right of purchaser.* The purchaser of the right, title, and interest of the defendant in a suit in and to the land the subject-matter of that suit, has no right as such to appeal from a decree passed against the defendant. **GAJADHAR PRASAD v. GANESH TEWARI** - - - - - vii 149

19. — *Order of Magistrate dismissing ministerial officer—Commissioner of Revenue and Circuit.* The Commissioner is the proper authority to whom an appeal lies from the order of a Magistrate dismissing a ministerial officer from his post, and the order of the Commissioner passed in appeal is final. **IN RE PARBHU NARAYAN SINGH** - - - iii A. C. 370

APPEAL—continued.

20. — *Measurement of land—Order of Collector as to standard of measurement—Beng. Act VI of 1862, ss. 9 and 11.* When the right of a proprietor to make, under s. 9, Beng. Act VI of 1862, a measurement of a tenure, is disputed solely on the ground that the proper standard pole of measurement under s. 11 is not employed, the Collector has power to enquire into and decide the true length of the standard pole, and an appeal lies from his decision. **MANMOHINI CHOWDHRAIN v. PREMCHAND ROY** - - - - - vi F. B. 1

21. — *Complaint—Suit—Act X of 1859, ss. 145 and 160.* A complaint under s. 145 of Act X of 1859 is not a suit, and does not fall within the description of the suits in which, under s. 160, an appeal is given to the Zilla Judge. **IN THE MATTER OF THE PETITION OF AMANATULLA** - - - - - vi 569

22. — *Act XXVI of 1867—Valuation of suit.* Under Act XXVI of 1867, the decision of a Court of first instance as to the valuation of the subject-matter of a suit is final. **IRHAN CHANDRA MOOKERJEE v. LOKENATH ROY** [vi Ap. 13]

23. — *Act VIII of 1859, ss. 30 and 36—Rejection of plaint for undervaluation—Act XXVI of 1867, Sch. B., art. 11 note—Stamp.* Where a plaint is rejected under s. 30 of Act VIII of 1859 by the first Court, on the ground that it is undervalued, an appeal lies from such order under s. 36 of Act VIII of 1859, and this appeal was not taken away by the note to art. 11, Sch. B to Act XXVI of 1867, the object of which was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint. **COLLECTOR OF SYLHET v. KALI KUMAR DUTT**, [vi F. B. 663]

Contra. **MUDHUSUDAN CHUCKERBUTTY v. RYMANI DAS** - - - - - vii 664 note

24. — *Act XL of 1858, ss. 21 and 28—Order rejecting application for removal of guardian.* The order of a Judge, rejecting an application for the removal of a guardian under Act XL of 1858, is appealable. **IN THE MATTER OF THE PETITION OF MAHENDRANATH MOOKERJEE** - - - - - vii Ap. 6

25. — *Bengal Civil Courts Act (VI of 1871), s. 22—Subject-matter in dispute—Jurisdiction of the High Court.* An appeal from the decree or order of a Subordinate Judge or Munsif, where the amount or value of the subject-matter in dispute in a suit exceeds Rs. 5,000, lies to the High Court, although the amount or value of the subject-matter in dispute in appeal is less than Rs. 5,000. **IN THE MATTER OF THE APPEAL OF DULI CHUND**, [ix 190]

26. — *Execution of decree—Act XXIII of 1861, s. 11.* The appeal from an order of a Subordinate Judge directing execution to issue lies to the District Judge, and not to the High

APPEAL—continued.

Court, where the amount claimed in a suit is under Rs. 5,000, although the amount sought to be recovered in execution has, by the addition of interest since decree, grown to a sum exceeding Rs. 5,000. **RUTTANJOTE KOOPER v. RAM DASS** - - - - - x 290

27. — *Regs. V of 1812, s. 26, and V of 1827, s. 3—Order for attachment and manager.*] No appeal lies to the High Court from an order passed by a District Judge, issuing a precept to the Collector to hold an estate in attachment, and to appoint a manager under s. 26, Reg. V of 1812, and s. 3, Reg. V of 1827. **IN THE MATTER OF THE PETITION OF THE COLLECTOR OF FURREEDPORE**, xii F. B. 266

28. — *Act XXIII of 1861, s. 11—Act VIII of 1859, ss. 270, 271—Rival decree-holders—Proceeds of sale in execution.*] An appeal does not lie, under s. 11 of Act XXIII of 1861, from an order made under ss. 270 and 271 of Act VIII of 1859 with regard to the claims of several rival decree-holders in respect of the proceeds of property sold in execution of a decree. **MISRI KOOPER v. MAHARAJA MAHESWAR BUKSH SING; MURDER KOOPER v. MAHARAJA MAHESWAR BUKSH SING; GURDI MISREE v. MAHARAJA MAHESWAR BUKSH SING; SRIONGO KOOPER v. MAHARAJA MAHESWAR BUKSH SING** - Sup. Vol. 13

29. — *Act XXIII of 1861, s. 11—Rival decree-holders—Attachment under s. 237, Act VIII of 1859.*] One of several decree-holders, who had obtained separate decrees against the same judgment-debtor, attached, under s. 237 of Act VIII of 1859, a fund in the hands of the Collector belonging to the debtor, being the surplus proceeds of a sale for arrears of Government revenue, and the fund was subsequently attached by the other decree-holders. The fund was not sufficient to satisfy all the decrees in full. The Principal Sudder Ameen, by order of the Judge, heard the various execution cases together, but recorded separate orders in each case for the rateable distribution of the fund amongst the creditors. On appeal by the first attaching-creditor, who claimed to be entitled to be paid the amount of his decree in full, to which appeal the rival decree-holders, as well as the judgment-debtor, were made parties,—*held* (per PEACOCK, C.J., and SETON-KARR, JACKSON, and HOBHOUSE, JJ.), that the several orders of the Principal Sudder Ameen were substantially only one order made upon one hearing in one case, to which all the execution-creditors in the several suits were parties; that the rival decree-holders were properly made respondents in the appeal, and could not be struck out; and that the question to be determined being one between the rival decree-holders, and not between the parties in each suit, the case was not appealable under s. 11, Act XXIII of 1861. *Held* per MACPHERSON, J., that though no appeal would lie as regards the rival decree-holders, the appeal was maintainable as regards the judgment-debtor alone. **DEEN DYAL SAHOO v.**

APPEAL—continued.

RADHA MUDDUN MOHUN DOSS; HATTEN LALL BHUGGUT v. RADHA MUDDUN MOHUN DOSS; KANYA LALL PUNDIT v. RADHA MUDDUN MOHUN DOSS - - - - - Sup. Vol. 927

30. — *Act X of 1859, s. 25.*] No appeal lies to the Civil Court from an order made by a Collector under s. 25, Act X of 1859, but only to the Commissioner. **PHILLIP v. SHIBNATH MOITRO** - - - - - Sup. Vol. 21

AMRA NASHYA v. GAJAN SHUTAR - ii Ap. 35

31. — *Act X of 1859, s. 77.*] No appeal lies to the Judge from the decree of a Collector passed under s. 77 of Act X of 1859 in a suit for a sum less than Rs. 100 in value. **HAMEEDDOOREN v. MOULVIE RAYEODDEEN AHMED** - - - - - Sup. Vol. 351

32. — *Costs—Act VIII of 1859, ss. 187, 189, 193, 196—Discretion, exercise of.*] *Held* (MACPHERSON, J., doubting), an appeal will lie on a mere question of costs. **GHIDHARI LAL ROY v. SUNDAR BIBI** - - - - - Sup. Vol. 496

33. — *Order in execution of decree—Transfer of decree in execution.*] An order passed by a Court to which a decree has been transferred for execution is not open to appeal, unless the order has been made in the course of the actual execution of the transferred decree. *Quere*—Whether, where a decree has been transferred to the Munsif's Court for execution, an appeal will lie to the Judge from the Munsif's order in the matter of the execution? **IN THE MATTER OF THE PETITION OF SUMAT DAS** - - - - - xiii Ap. 27

34. — *Act VIII of 1859, s. 230—Order rejecting application under.*] No appeal lies against an order of the Court refusing to entertain an application under s. 230, Act VIII of 1859, by a party other than a defendant, who disputes the title of the decree-holder. **RASUL BIBI v. SHEIKH MOBARIK ALI** - - - - - ii A. C. 303 note

35. — *Registration Act (XX of 1866), ss. 32, 83, and 84.*] No appeal lies from an order by a Registrar refusing to exercise his discretion under s. 32, Act XX of 1866. Such an order comes neither within s. 83 nor s. 84 of the Act. **SARKIES v. SANGRAM SINGH**,

[vi 578 note

36. — *Letters Patent, cl. 12—Leave to institute suit.*] An appeal lies from an order granting leave to the plaintiff to institute a suit under cl. 12 of the Letters Patent. **HAJEE ISMAIL HAJEE HUBUB v. HAJEE MAHOMED HAJEE YOUSUF; ROHIM BYE v. HADJEE MAHOMED HAJEE YOUSUF** - - - - - xiii 91

37. — *Admission of, after limited period—Grounds for admission after time—Sufficient cause for delay—Act VIII of 1859, s. 333.*] As to what will be considered sufficient cause for delay in filing appeal and be ground for admitting a petition of appeal after the time limited by Act VIII of 1859, s. 333. **SECRETARY OF STATE v. MUTU SAWMY** - - - - - iv Ap. 84

38. — *Filing appeal after prescribed time—Removal from file.*] When a petition of appeal

APPEAL—continued.

has been registered after lapse of the time allowed by law, the Judge has power, on discovery thereof, to reject or to remove it from his file. *JAFER HOSSEIN v. MAHOMED AMIR* - - - iv Ap. 103

39. — *Calculation of period allowed for—Reasonable ground for enlarging time—Review.* The plaintiff against whom a decree had been given did not appeal within the twenty days allowed for that purpose; but, after the expiration of more than a month, he made an application for a review of judgment, which was refused after nine months. Nineteen days later he applied to have the time for filing his appeal enlarged. *Held*, that the application was not made in time. Sufficient cause was not shown for not having presented the appeal within the limited period. In calculating the number of days limited for appealing, the period occupied by the Court in disposing of an application for review presented during the time limited for appealing, must not be reckoned. *NOBO KISSEN SINGH v. KAMINEE DASSEE* - - - Sup. Vol. 349

40. — *Time for preferring—Pendency of application for review.* In computing the period within which an appeal may be preferred, the time during which an application for review was pending is to be excluded. *IN THE MATTER OF THE PETITION OF BROJENDRO COOMAR ROY* - - - Sup. Vol. 728

41. — *Delay in filing—Grounds for delay.* Delay in preferring an appeal should be explained. Inasmuch as a new statement of the law by the High Court is not a sufficient excuse for delay in applying for a review of judgment, it is still less an excuse for delay in appealing against a judgment. *MOWRI BEWA v. SOORENDRANATH ROY* - - - ii A. C. 184
AMBA NÁSHYA v. GAJAN SHUTAR ii Ap. 35

42. — *Practice—Act VIII of 1859, s. 348—Respondent's objections.* A respondent may file a notice with the Registrar, specifying therein the objections which he intends to take on the hearing of the appeal. *IN THE MATTER OF MADHOBEE DOSSEE* - - - Sup. Vol. 587

43. — *Act VIII of 1859, s. 348—Plea of limitation.* The first Court held that the plaintiff's suit was barred by the law of limitation, but the decision was reversed on appeal, and the case was remanded by the lower Appellate Court for trial on the merits. The first Court then gave a decree for the plaintiff, but on appeal the lower Appellate Court dismissed the suit on the merits. The plaintiff preferred a special appeal to the High Court. *Held*, it was competent to the defendant on such appeal, under s. 348 of the Civil Procedure Code, to raise the objection that the suit was barred by the law of limitation. *IN THE MATTER OF THE PETITION OF HIMMAT BAHADUR*,
[Sup. Vol. 429]

APPEAL BENCH—Decision of, how far binding on another Court. The decision of an Appeal Bench of the High Court upon a point of law,

APPEAL BENCH—continued.

or the construction of a document in the case before them, is not necessarily binding on a single Judge of that Court, where the same question again arises in another suit before him. *ABHAI CHARAN GHOSE v. DASMANI DAS* - - - - - vi 623

APPEAL BY ONE DEFENDANT, REVERSAL OF WHOLE DECREE ON.

See CIVIL PROCEDURE CODE, s. 73, AND S. 337.

APPEAL IN CRIMINAL CASES—Criminal Procedure Code (Act XXV of 1861), s. 411—Separate sentences—Act X of 1872, s. 273.] A. was convicted of offences under ss. 143, 447, and 211 of the Penal Code, and sentenced by the Magistrate to one month's imprisonment for each offence. *Held* that, under s. 411 of Act XXV of 1861, there was no appeal. The separate sentences could not be taken together and combined into one sentence, so as to give a right of appeal. *QUEEN v. NAGARDI PARAMANIK* - - - i A. Cr. 3

2. — *Criminal Procedure Code (Act VIII of 1869), ss. 445A and 445C—Deputy Commissioner—Act X of 1872, ss. 36 and 270.]* The right of appeal to the High Court given by s. 445C of the Criminal Procedure Code to persons convicted on a trial held by an officer invested with the power described in s. 445A, is confined to cases in which the officer has exercised that power. *QUEEN v. DHONA BHOYA*,
[v F. B. 658]

3. — *Criminal Procedure Code (Act VIII of 1869), s. 422—Act X of 1872, s. 282.]* Upon an appeal from a sentence passed by a Magistrate, the Sessions Judge remanded the case for the purpose of additional evidence being taken by the lower Court. Such evidence having been taken by the Magistrate, the case was returned to the Appellate Court. The Sessions Judge then disposed of the case in the manner prescribed by s. 419 of the Criminal Procedure Code. On an application by the prisoner to the High Court to be allowed to appeal on the merits of the case under s. 403, Act XXV of 1861, *held*, no appeal lay to the High Court on the merits. *IN THE MATTER OF THE PETITION OF DEANOBAB GHOSE*, vi 483

4. — *Power of single Judge on Appellate Side—Rule 30, Jan. 1865.]* A Judge of the High Court, sitting alone on the Appellate Side, has the power to hear and dispose of appeals in criminal cases. *QUEEN v. CHANDRA JUGI* - - - - - ix 6

5. — *Difference of opinion between Judges of Division Bench—Letters Patent, cl. 36—Criminal Procedure Code (Act XXV of 1861), s. 420.]* When a criminal appeal is heard by two Judges, sitting as a Division Court, and they differ in opinion, the opinion of the senior Judge must prevail under s. 36 of the Letters Patent of the High Court of 1865, notwithstanding s. 420 of the Criminal Procedure Code. *QUEEN v. KAZIM THAKOOR* ii F. B. 25

APPEAL IN CRIMINAL CASES—continued.

6. — *Power of High Court—Stay of Criminal proceedings—Perjury—Forgery.*] When a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined. **IN THE MATTER OF THE PETITION OF RAMPRASAD HAZRA** - - - - - Sup. Vol. 426

7. — *Evidence — Procedure on appeal.*] Evidence taken before the Magistrate, but not used at the trial, cannot be referred to an appeal. **QUEEN v. WAZIRA** - - - - - viii Ap. 68

8. — *Procedure on appeal—Improper admission of evidence—Discharge of prisoner on appeal—Conviction set aside.*] Where the High Court on appeal found the evidence against a prisoner insufficient to support the conviction, and would, if the case had been before them on the facts, have reversed the conviction if the case had been tried without a jury, they ordered the verdict to be set aside, and the prisoner to be discharged, though where a verdict is set aside on appeal they can order a new trial. **QUEEN v. MAHIMA CHANDRA DAS** - - - - - vi Ap. 108

APPEAL, REGISTRATION OF PETITION OF.

See CIVIL PROCEDURE CODE, s. 341.

APPEAL, RIGHT OF

See DIVORCE ACT.

CIVIL PROCEDURE CODE, s. 73 AND s. 365.

APPEAL, RIGHT OF CO-RESPONDENT TO BE HEARD ON.

See DIVORCE ACT.

APPEAL TO PRIVY COUNCIL.

See EXECUTION OF DECREE.

2. — *Order made on appeal—Letters Patent, cl. 39—24 & 25 Vict., c. 104, s. 15—Appealable order — Sale in execution, order confirming.*] Certain property having been sold in execution of a decree, the judgment-debtor applied to have the sale set aside. This application was rejected; but a review of the order rejecting it was subsequently granted, and the sale set aside; and an application by the auction-purchaser for the cancellation of the order setting aside the sale was refused. Thereupon the purchaser applied by petition to the High Court, praying that the order made on review might be reversed. In his petition he submitted that "the sale ought to have been confirmed" when the application of the judgment-debtor to have it set aside was first rejected; but the petition did not contain a formal prayer for confirmation of the sale. A rule, however, was granted, calling on the judgment-debtor to show cause why the order reversing the sale should not be set aside and the sale confirmed, which rule, after argument, was made absolute. The judgment-debtor having obtained leave to appeal to the Privy Council from the order making the rule absolute, the purchaser objected that such order was not appealable

APPEAL TO PRIVY COUNCIL—continued.

under cl. 39 of the Letters Patent, 1865, on the ground that it was not an order "made on appeal." *Held*, that as the purchaser had obtained a rule calling on the judgment-debtor to show cause why the sale should not be confirmed, and had allowed that rule to be made absolute, he could not contend that the order making the rule absolute was not an order made on appeal. *Semble*.—Orders made by the High Court under s. 15 of 24 & 25 Vict., c. 104, are subject to appeal to the Privy Council. **HURDEO NARAIN SAHU v. GRIDHARI SINGH** - - - - - xiii 108

3. — *Letters Patent, cls. 39 and 42.*] An order rejecting a review of judgment is not an "order made on appeal" within the meaning of cl. 39 of the Letters Patent of the High Court. In cases of appeal made under cl. 42 of the Letters Patent, the Court ought not, in transmitting the proceedings connected therewith, also to send such proceedings, as applications for review of the judgment of the High Court and the orders of the Court thereupon. **ENAYET HOSSEIN v. RANEE ROUSHAN JEHAN** - - - - - i F. B. 1

4. — *Letters Patent, 1865, ss. 15 and 39.*] An appeal lies directly to the Privy Council from the decree of a Division Bench of the High Court on an appeal from the mofussil, although the Judges differed, and upon the points of difference a further appeal to the High Court is given under cl. 15 of the Letters Patent. **IN THE MATTER OF THE PETITION OF THE COURT OF WARDS ON BEHALF OF THE RAJA OF DARBANGA** - - - - - vii 780

5. — *Execution of decrees.*] An appeal lies to Her Majesty in Council from an order passed by the High Court in a case of execution of decree, in which the amount involved exceeds Rs. 10,000. **VELANTY BAGUM v. RUGGHONATH PERSAD** - - - - - Sup. Vol. 747

6. — *Execution of decrees of Privy Council.*] An appeal will lie as of right from the order of a single Judge of the High Court as to execution of a decree of the Privy Council, where the property is over Rs. 10,000. **LILANAND SING v. MAHARAJA LUCKIMPUR SINGH BAHADUR** - - - - - v P. C. 605

7. — *Time for appeal—Privy Council rules.*] The High Court has no power to allow an appeal to Her Majesty in Council when the petition is not presented within six calendar months from the date of the decree complained of. When the six months expired during the Durga Pooja vacation, and the petition of appeal was presented on the first day the Court resumed its sittings,—*held*, that the petition was too late, and leave could not be given to appeal. **TAMVACO v. SKINNER**, [i O. C. 39]

8. — *Power of High Court to restore appeal.*] After an appeal to Her Majesty in Council has been dismissed for default, or for any reason removed from the file of the High Court, under the law or under the rules of the Court, it is in the discretion of the

APPEAL TO PRIVY COUNCIL—continued.

High Court to restore the appeal after the period of six months allowed for preferring such appeals has expired. IN THE MATTER OF THE PETITION OF RADHA BINODE MIS-
[Sup. Vol. 780]

9. — *Rules of 1838—Review, pendency of application for.*] When an application to review a judgment is rejected by the High Court, the six months allowed for appeal to Her Majesty in Council run from the date of the judgment, and not from that of the order rejecting the review. SOUDAMINEE DOSSEE v. MOHARAJA DHERAJ MAHATAS CHAND BAHADUR — — — — — Sup. Vol. 585

10. — *Pendency of—Legal disability.*] The pendency of an appeal to England does not put the party who, subject to that appeal, is the owner of an estate under a legal disability to bring a suit in that character against third parties. PRAHLAD SEN v. RAJENDRA KISHORE SINGH — — — — — ii P. C. 111

11. — *Review—Practice.*] Where an application for review was rejected and no appeal to the Privy Council was filed against the order of rejection, papers filed with the application for review will not be forwarded with the record to the Privy Council on the appeal of the case. FUKHERUDDIN MAHOMED CHOWDHRY v. NAJUMUNISSA CHOWDHRAIN — — — — — ii A. C. 364

12. — *Delay in transmission of—Power of High Court to strike it off the file.*] Until a petition of appeal to the Privy Council presented to the High Court has been admitted and allowed, a party has no right of appeal to the Privy Council. If the petition is allowed to remain on the file of the Court, and is not prosecuted within a reasonable time, the Court has power to order its removal from the file. GORARDHAN BARMONO v. MANO BIRI, [iii O. C. 126, S. C. on appeal v 76]

13. — *Subject-matter of suit below appealable value—Decision to govern other similar suits by same party—Practice—Leave to appeal.*] Leave to appeal to the Privy Council granted where the appeal, though valued at less than Rs. 10,000, involved indirectly questions respecting property of the value of Rs. 10,000, inasmuch as the judgment of the High Court would govern the decision in other suits which the plaintiff intended to bring on precisely the same grounds, and in respect of which precisely the same questions would arise as had arisen in the suit sought to be appealed. ANANDA CHANDRA BOSE v. BROUGHTON, ix 423

14. — *Agreement not to appeal—Application to stay proceeding—Practice.*] Where an appeal is preferred contrary to an agreement not to appeal, application to stay the proceedings should be made before the case is prepared for hearing. AMIR ALI v. INDERJIT KOER — — — — — ix P. C. 460

APPEALABLE ORDER.

See APPEAL TO PRIVY COUNCIL.
INJUNCTION.
LETTERS PATENT, CL. 15.

APPEARANCE, DISMISSAL FOR DEFAULT IN.

See CIVIL PROCEDURE CODE, s. 110.
RES JUDICATA.

APPEARANCE, EXTENSION OF TIME FOR.

See BILLS OF EXCHANGE ACT.

APPELLATE COURT, JURISDICTION OF—Question of limitation.] An Appellate Court can *ipso motu* raise the question of limitation for the first time, where it appears on the face of the plaint that the suit is barred. MOZAFFUR ALLY v. GIRISH CHANDRA DAS — i A. C. 25

2. — *Plaint, amendment of.*] *Somble.*—A plaint cannot be amended in an Appellate Court. ABDUL GAFOOR v. MUST. NUB BANU, [i A. C. 78]

3. — *Plaint—Objection for defect in plaint.*] An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint. COLVIN COWIE v. ELIAS — — — — — ii A. C. 212

4. — *Striking names out of plaint and amending issues—Merits of case, error not affecting—Act VIII of 1859, s. 350.*] Four plaintiffs sued as partners, but it was found during the trial that they were not all partners at the time the cause of action accrued; and the Judge thereupon amended the issue which had been raised on that point, and raised the question whether the plaintiffs were or were not partners; and it being decided in the negative, the Judge ordered two of the plaintiffs' names to be struck out of the plaint, and he gave a decree in favour of the other plaintiffs. *Held*, that the Judge acted rightly in amending the issue, but that he should have done so without striking the names of the plaintiffs out of the plaint. Such an error is "an error in an interlocutory order not affecting the merits of the case;" and, therefore, under s. 350, Act VIII of 1859, not a ground for reversing the decree on appeal. EAST INDIAN RAILWAY COMPANY v. JORDAN — — — — — iv O. C. 97

5. — *Error in description of defendant as a minor—Appeal by guardian treated as appeal by minor.*] The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and the lower Appellate Court refused to pass an order, allowing the appeal by the father to stand as an appeal by the defendant. *Held*, that the lower Appellate Court could, in the exercise of its discretion, allow the appeal to stand as an appeal by the defendant, but the High Court could not interfere with the order in special appeal. SHAMA CHARAN GHOSE v. TARAK NATH MUKHOPADHYA — iii Ap. 115

6. — *Special Appeal—Act VIII of 1859, ss. 351, 354, and 355.*] In a suit on a bond executed under a mooktearnamah, which was not produced, the Court of first instance admitted secondary evidence of it, and decreed the suit. In special appeal, the High Court was of opinion that the secondary evidence had been improperly admitted, and, therefore, the decree in the plaintiff's favor could not

APPELLATE COURT, JURISDICTION OF—contd.

stand. Upon this it was contended that the suit should be dismissed, as the Court hearing a case in special appeal had no power, under such circumstances, either to remand the case or to call for additional evidence. *Held*, that although the powers conferred by ss. 351, 354, and 355 of Act VIII of 1859 on the Court of Regular Appeal are not directly given to the Court of Special Appeal, yet the Court, when it found the order of a lower Appellate Court was wrong, could point out the error and direct the lower Appellate Court to make such order as would rectify the error. **AZUR ALI v. KALI KUMAR CHUCKERBUTTY**, [ii A. C. 815]

7. — *Additional evidence — Act VIII of 1859, s. 355—Particular title.* The lower Appellate Court "considered it necessary, for the proper decision of the case," to examine witnesses whose evidence has not been taken in the trial, and relying mainly on their evidence, reversed the decision of the Munsif, and gave a decree in favour of the plaintiff. *Held* in appeal, that the lower Appellate Court had sufficiently recorded its reasons within the meaning of s. 355 of Act VIII of 1859 for requiring the additional evidence; that it was right in so doing; and that, although no special title had been set up in the plaint the decree which was given on the evidence in favour of the plaintiffs could not be reversed in special appeal. **RADANATH DHUBI AND MAHES CHANDRA DHUBI v. RAM GOBIND PAUL** — — — — — iii A. C. 218

8. — *Act VIII of 1859, s. 355—Improper admission of evidence—Evidence Act (II of 1855), s. 57.* An Appellate Court should not receive evidence, though alleged to be material and important, which has not been produced in the lower Court, without substantial reason for its non-production. The High Court refused to reverse a decision on the ground of the improper admission of evidence. **JAGADINDEA BANWARI GOBIND v. BHOBOTARINI DAS** — — — — — v Ap. 54

9. — *Admission of unstamped document in evidence—Act X of 1862, ss. 15 and 17—Objection made on appeal—Act VIII of 1859, s. 350.* When the Court of first instance admitted, without objection, unstamped receipts in evidence, but the Judge on appeal rejected the documents, and reversed the decision of the lower Court, — *held*, that the documents once received without objection were wrongly rejected, and the decision below wrongly reversed on appeal, as the irregularity was not one affecting the merits of the case under s. 350, Act VIII of 1859; and that the Court had no power to receive the documents on payment of the stamp duty and penalty under s. 17, Act X of 1862. **LALJI SINGH v. SYAD AKRAM SEN** — — — — — iii A. C. 235

10. — The fact that the document was received in evidence without a stamp is no reason for reversing the decision in appeal. **CURRIE v. MUTU RAMEN CHETTY**, iii A. C. 126

APPELLATE COURT, JURISDICTION OF—contd.

11. — Where title-deeds of land had been deposited by a debtor with the Bank of Bengal, and a letter was given authorizing the Bank to sell the land and apply the proceeds in liquidation of a debt then existing and due to the Bank, the Court declined to entertain the question whether the document relied on was one requiring a stamp, as being a matter not affecting the merits of the case or the jurisdiction of the Court. **IBRAHIM AZIM v. CRUICKSHANK** — — — — — vii 653

12. — An Appellate Court has no power to reverse the judgment of a Court of first instance, merely on the ground that the document on which the suit was based did not bear a stamp at all. **SRINATH SAHA v. SARODA GOBINDO CHOWDEY** — — — — — v Ap. 10

13. — *Valuation of suit — Dismissal of suit for insufficient stamp—Act VIII of 1859, ss. 31 and 350.* Where a defendant, after the case had been gone into on the merits, set up that the suit had been undervalued, and the Court of first instance found in favour of the plaintiff on that issue, but the lower Appellate Court was of a contrary opinion, and dismissed the suit, — *held*, that the lower Appellate Court should, before dismissing the suit on that ground, have allowed the plaintiff the option of supplying the necessary stamps, as the first Court would have done, under s. 31, Act VIII of 1859. In any case, the order of the first Court was not one affecting the merits of the case or jurisdiction of the Court; and, therefore, under s. 350, Act VIII of 1859, the suit could not be dismissed on appeal upon that ground. **WAJID ALI KHAN v. LALA HANUMAN PRASAD** — — — — — iv A. C. 139

14. — *Insufficient stamp—Return of plaint — Act VIII of 1859, s. 30 — Jurisdiction.* *Held* in special appeal that the lower Appellate Court was right in setting aside the proceedings of the Munsif, on the ground that the property in suit was valued at an amount beyond his jurisdiction; but the plaintiff was entitled to have the plaint returned to him, that he might present it with the proper additional stamp before the proper Court. **JADU v. HIFAZAT HOSSEIN** — — — — — v Ap. 15

15. — *Rejection of appeal.* *Quare.* — Whether, after registering and admitting an appeal, and causing notice to be served, an Appellate Court can reject the appeal as not being filed within the prescribed time? **SECRETARY OF STATE FOR INDIA IN COUNCIL v. MUTU SWAMY** — — — — — iv Ap. 84

16. — *Grounds of appeal — Contention abandoned in lower Court.* An appellant in regular appeal may not, at the hearing, raise a contention of law expressly abandoned by him in the Court below, and not contained in the memorandum of appeal. **PABITRA DAS v. DAMUDAR JANA** — — — — — vii 697

17. — *Presumption — Judgment of lower Court, grounds for interference with.* An Appellate Court ought not to interfere with

APPELLATE COURT, JURISDICTION OF—contd.

the judgment of the lower Court until perfectly satisfied that the conclusion arrived at by the Court below is erroneous. It is a presumption of law that the judgment appealed against is right until the contrary is shown; and when there is a doubt about it, the benefit of that doubt should be given by the Appellate Court to the respondent. **TAYU-BUNNISSA BIBI v. KUWAR SHAM KISHORE ROY** - - - - - vii 631

18. — *Judgment of lower Court—Grounds for reversal of—Defect in investigation—Insufficient finding.* An Appellate Court should find some sufficient and significant facts before it reverses a judgment of the lower Court, and should show a proper basis for its conclusions. **ANISUL FUTWA v. CHANDO** - viii Ap. 3

19. — *Judgment—Grounds for reversal.* An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. **MAHADAO OJHA v. PARMESWAR PANDAY** - - - - - ii Ap. 20

20. — *Costs—Action on contract—Verdict for less than Rs. 1,000—Certificate under Act XXVI of 1864, s. 9.* Where, in an action in the High Court, founded on contract, a verdict was found for the plaintiff for a sum less than Rs. 1,000, and the Judge who tried the case awarded costs without certifying under s. 9, Act XXVI of 1864, that the action was fit to be brought in the High Court, *held*, that the Court might supply the omission on appeal. **NOROOOMAR DOOS v. KEWATA MUG** - x 353

21. — *Reference to arbitration—Act VIII of 1859, ss. 312 and 313—Act XXIII of 1861, s. 37.* An Appellate Court has no power, even by consent of parties, to refer a case to arbitration under the arbitration sections of Act VIII of 1859, which apply only to Courts of original jurisdiction; nor is such power conferred on an Appellate Court by s. 37, Act XXIII of 1861. **JUGGESUR DEY v. KRITARTHOMOYEE DOSSEE** - xii F. B. 266

Contra, **RUSSOOL BIBEE v. JAN ALI CHOWDREY** - - - - - xii 267 note.

APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME IN A. and B. obtained a decree for possession of land against C. On their proceeding to execute their decree, D., who was in possession, presented a petition to the Munsif, complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried, on remand from the Judge, as a suit under the provisions of s. 229 of Act VIII of 1859. *Held per JACKSON, J.*, that as the decree-holder had not complained that the officer of the Court had been obstructed or resisted by the claimant the case did not fall within s. 229 of Act VIII of 1859; and, therefore, the Court had not jurisdiction to take summary cognizance of the case. *Per MITTER, J.*—This objection, taken for the first time on special appeal, did not affect the merits of the case or the jurisdiction of the Court. **BUHAL SINGH CHOWDREY v. BEHARI LALL** - - - - - i A. C. 206

APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME IN—continued.

2. — A. sued B. to recover possession of a hereditary jote, of which he alleged he had been dispossessed by B. during his minority. B. raised the defence of limitation and relinquishment by A.'s grandmother and guardian. The Munsif held, that the suit was not barred on the ground that it had been brought within three years from the date on which A. had attained his majority, but decided against A. on the merits. On appeal, the question of limitation was not raised, but on the merits, the Judge also found against A. On special appeal by A., B. took an objection under s. 348 of Act VIII of 1859 that A.'s suit was barred. *Held*, that B. could not take the objection at that stage. **KEDERNATH MOOKERJEE v. MATHEANATH DUTT** - - - - - i A. C. 17

3. — A Munsif entertained a petition by a defendant under s. 119 of the Civil Procedure Code, and set aside his former judgment given *ex parte* in favour of the plaintiff, and dismissed the plaintiff's suit. The plaintiff, on appeal before the Judge, did not raise the objection that the Munsif ought not to have entertained the petition of the defendant, as it had not been presented in due time. It was *held* to be too late to raise the objection on special appeal. **BORO KHASIA v. JATA SIRDAR**, [viii 78]

4. — In a suit to recover possession, the plaintiff alleging that the land in dispute from which he had been ousted had been settled with him by Government in 1833 as part of his zemindary, and the defendant alleging that the land was part of his lakhiraj garden land, which had been released by Government from assessment, the Courts below found that the lands in dispute were part of those which had been settled with the plaintiff. On appeal to the Privy Council, the defendant attempted to show that, assuming the lands in question to have been part of those settled with the plaintiff, that settlement had been improperly made. *Held*, that this contention was not open to the defendant upon the record, never having been taken in the Courts below. **SRIMATI DASI v. RANI LALANMANI**, ii P. C. 64

5. — Objection allowed to be taken in special appeal, which had not been taken at any previous stage of the suit. **RAMTARAK KARATI v. DINANATH MANDAL** - - - vii 184

6. — An objection not taken in cross-appeal before the lower Appellate Court, cannot be taken in special appeal; but if the case be remanded for new trial, such objection may then be taken before the Court of first instance. **DURGARAM ROY v. RAJA NARISING DEB**, [ii A. C. 254]

7. — The defendants in the Court below unsuccessfully claimed to retain possession of some land under a kobala from a Mohammedan widow, who was alleged by them to have been absolutely entitled thereto under her right of dower. *Held*, that the defendants could not, in special appeal, set up for the first time that

APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME IN—continued.

the widow was entitled to a share by inheritance, if not as denmohur, no case of that kind having been made in the Courts below, and no enquiry asked for into the state of the family, or whether any and what share came to the widow. *AMBIKA CHURN DUTT v. NADIR HOSSEIN* - - - - ii A. C. 268

8. — *Held*, that a fresh ground could not be taken in appeal which had not been taken below, though based upon a Full Bench ruling. *KASIMUDDI KHANDKAR v. NADIR ALI*, [ii A. C. 265

9. — In a suit for a kabuliata at an enhanced rate, the Court of first instance gave a decree for an amount less than that of the claim. No objection was taken before the lower Appellate Court, that, under the Full Bench Ruling in *Gholam Mahomed v. Asmut Ali Khan Chowdry*, the suit was liable to be dismissed. This objection was taken for the first time in special appeal. *Held*, that the objection could not be entertained. *NIZAMUT ALI v. ROMESH CHANDRA ROY* - iii A. C. 78

But see *HAMED ALI v. AFFEEOODDEN*, [i S. N. xiv

10. — An objection that the judgment of the Court of first instance is erroneous under a ruling of the Full Bench of the High Court not taken before the lower Appellate Court, will not be allowed to be taken in special appeal. *NARATTAM DASS CHOWDHRY v. ROSOPYARI CHOWDHRAIN* - - - - iii A. C. 271

11. — A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Courts below, and to raise altogether a new issue. *SHIU DAS NARAYAN SINGH v. BHAGWAN DUTT*, [ii Ap. 15

12. — In special appeal a new ground may be taken, if it manifestly arises out of the facts alleged and admitted, whether pressed or not before the lower Appellate Court. *KALIMOHAN CHATTERJEE v. KALI KRISHNA ROY CHOWDHRY* - - - - ii Ap. 39

13. — The defendant objected to the jurisdiction of the first Court, but took no objection to the jurisdiction before the lower Appellate Court. *Held*, that objection to the jurisdiction was waived. *MAHOMED HOSSEIN v. AKAYA NARAYAN PAL* - ii Ap. 42

14. — The reception of papers and documents by the lower Appellate Court, unless objected to at the time, cannot be made a ground of special appeal. *RASH BEHARI SINGH v. NABATI PODDAR* - [iii A. C. 99

15. — Where no objection had been taken as to the admissibility of documentary evidence, viz., a decree and other proceedings in regard to that decree, which had been made use of by the opposite party, an Appellate Court has no jurisdiction to exclude it. Where a defendant allows, without objection, a purchaser of a plaintiff's interest in the suit to

APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME IN—continued.

substitute his name on the record under an order of Court, he cannot afterwards contend that the suit is thereby abated. *BIR CHANDRA ROY MAHAPATTER v. BANSHI DHAR ROY MAHAPATTER* - - - - iii A. C. 214

16. — *Held*, that as the defendant had made no objection to the manner in which the plaintiff had calculated damages in the Courts below, the question could not be gone into on special appeal. *MCDONALD v. RAJARAM ROY*, [iii Ap. 28

17. — As a general rule objections not taken in the lower Court ought not to be allowed to be set up in the Appellate Court; but where the Judge in appeal had allowed such an objection to be taken, and had overruled it, the High Court allowed it to be raised in special appeal, and being of opinion that it was a valid objection, reversed the decision of the Court below. *DINDAYAL PARAMANIK v. SUBENDRANATH ROY* - - iii A. C. 78 note

18. — The errors of procedure of the Court of first instance are not to be remedied, when they have not been made a ground of complaint before the lower Appellate Court. *ANURUP CHANDRA MUKHOPADHYA v. HIRAMANI DAS* - - - - iii Ap. 38

19. — *Held*, that as the plea as to the inadmissibility of a document as evidence for want of registration was not specially taken in the Court below, it could not be allowed in a special appeal. *GRISH CHANDRA ROY CHOWDHRY v. AMINA KHATUN* - - iii Ap. 121

20. — Where a party has a good objection, such as an absence of tender before suit, to urge to the prosecution of a suit, his omission to do so in the first instance is fatal to his availing himself of it as an objection on appeal. *MAHOMED AMEENOODDEEN KHAN v. MOZUFFUR HOSSEIN KHAN* - v P. C. 570

21. — Where an objection that the suit was barred by limitation was not taken into consideration by the lower Appellate Court, and in special appeal the facts necessary to support the plea of limitation were stated in the ground of appeal, but for another reason, and on another form than those for which it was raised before, the High Court allowed the objection to be taken and to prevail, and dismissed the suit. *BISSONATH SURMA v. SHOODA-MOOKIE* - - - - xi Ap. 1

22. — In the first Court an issue was raised whether or no the hearing of this suit was barred by the law of limitation. One of the grounds of appeal to the Judge was, that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector's settlement. The Judge did not notice this ground in his judgment. The same ground of appeal was repeated in the special appeal to the High Court, but that Court refused to entertain it for the reason that it did not appear to have been raised

APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME IN—continued.

in argument before the Judge, or in the first Court. **RAJ KUNWAR, alias SHEOMURAT KUNWAR, v. INDERJIT KUNWAR** - - - v 535

23. — In a suit for enhancement of rent, it was objected on behalf of the defendant in special appeal, that service of notice had not been proved. *Held*, the question was one of fact, and the objection ought, therefore, to have been taken in the Court of first instance. **DUMAINE v. UTTAM SINGH** - - - v Ap. 44

24. — The High Court allowed objections to be taken by a defendant which had not been taken in either of the lower Courts. **BHUBAN CHANDRA SHOME v. RAMDYAL SHAMANTA** - - - - - v Ap. 63

25. — The lower Appellate Court ought not to have entertained the objection of the defendant that no patta had been tendered before the institution of the suit, as the objection had not been taken before the first Court. That issue was not essential to the right determination of the suit upon the merits. **RAMANATH RAKHIT v. CHAND HARI BHUYA** - vi 356

26. — A suit was brought against the plaintiff by his tenants for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant, in the course of that suit, presented a petition to the Court, in which he stated that he was the owner of the land on which the crops attached had been raised. The plaintiff brought the present suit for a declaration of his title and confirmation of possession, alleging that the defendant's statement affected his (plaintiff's) title by throwing a cloud over it. On special appeal it was objected for the first time that the plaint disclosed no cause of action, and the objection was admitted and prevailed. **JAN ALI KHONKAR v. ABDUR KUHMA** - - - - - vi 154

27. — An objection urged by the respondents for the first time in special appeal, that inasmuch as it was the plaintiff's own fault that he did not appear before the Collector and make his objection in time, his suit, which is one merely for declaration of title, and therefore is in the discretion vested in the Court by the 15th section of Act VIII of 1859, ought not to be entertained, was not allowed. **SPENCER v. PUHUL CHOWDREY; SPENCER v. SHAIKH KADIR BUKSH** - - - - - vi 658

28. — An objection as to the plaintiff having no cause of action may be taken at any stage of the suit. **PARBATI CHARAN MUKHOPADHYA v. KALI NATH MUKHOPADHYA**, [vi Ap. 73

As to taking objections for the first time, see also **MANIBUDDHEEN AHMED v. RAM CHAND**, [ii A. C. 341

NAIMUDDAR JOWARDAR v. SCOTT MONCRIEFF, [iii A. C. 283

NANOO ROY v. JHOMMOCK LALL DASS, [xii 293 note

SHEOGOBIND RAWUT v. ABHAY NARAIN SINGH. [v Ap. 17

APPLICATION FOR EXECUTION.

See **LIMITATION ACT XIV OF 1859**, s. 20.

LIMITATION ACT IX OF 1871, SCH. II, No. 167.

APPLICATION TO SUE IN FORMA PAUPERIS.

See **MAHOMEDAN LAW, DOWER.**

APPOINTMENT BY WILL.

See **COURT FEES ACT.**

APPOINTMENT OF DAUGHTER.

See **HINDU LAW, CUSTOM.**

APPROVERS—Uncorroborated evidence.] The evidence of an approver is not sufficient to convict a person charged with an offence. **QUEEN v. TULSI DOSAD** - - - iii A. Cr. 66

2. — Where a prisoner had been found guilty by the jury on the uncorroborated evidence of an approver, after the Judge in his summing up had pointed out to them the desirability, under the circumstances, of such corroboration, the High Court, on appeal, refused to set aside the conviction. **QUEEN v. MAHIMA CHANDRA DAS** - - - vi Ap. 108

See **QUEEN v. ELAHI BUKSH** - Sup. Vol. 459

ARBITRATION.

See **APPEAL.**

APPELLATE COURT, JURISDICTION OF.

SMALL CAUSE COURT, MOFUSSIL.

2. — *Interest after date of submission—Costs of reference—Act VIII of 1859, ss. 312—322.*] Where all matters in difference between the parties in the suit were referred to arbitration under an order of Court,—*held*, that the arbitrators had power to award interest after the date of the submission, and to deal with the costs of the reference and award. **MOHAN LALL v. NATHU RAM** - i O. C. 144

3. — *Procedure—Evidence.*] Arbitrators ought only to take such evidence as is required by the terms of the agreement referring the question in dispute to arbitration. **KRISHNAKANTA PARAMANIK v. BIDYA SUNDAREE DASI**, [ii Ap. 25

4. — *Umpire—Act VIII of 1859, s. 319—Incapacity to act—Absence from the country.*] When a person goes away from the country and remains away, and there is no evidence to show an intention to return, that person becomes incapable of acting as umpire within the meaning of s. 319 of Act VIII of 1859. **GADADHAR MOITREY v. GANGA PRASAD MOITREY**, [iv O. C. 89

5. — *Award—Submission to, and completion of, arbitration—Act VIII of 1859, ss. 315, 318, and 320.*] By an order of Court, of January 17th, 1867, a suit was referred to two arbitrators, under s. 312, Act VIII of 1859, who were to make their award in writing, and submit the same to the Court within three months. No order for enlarging that time was made. The first meeting of the arbitrators was held on May 22nd, 1867, and four subsequent meetings were held, at which

ARBITRATION—continued.

all the parties attended, and evidence was taken; at the last of which meetings, namely, on 27th July, an objection for the first time was taken on behalf of the defendant that the time limited by the order of reference had expired, but the arbitrators proceeded with the reference. The award was made on 12th August, 1867, and remained with one of the arbitrators until his death in August, 1868. Subsequently it was produced by the other arbitrator, on the application of the parties to the suit, and delivered to the successful party, by whom it was brought into Court on the 10th May, 1870, and judgment was moved for in accordance therewith. *Held*, that the arbitrators had authority to make the award. The award was properly submitted to the Court. S. 320, Act VIII of 1859, does not make it necessary for the arbitrators to submit the award to the Court personally. Submission to the Court, under s. 320, is not necessary to the completion of an award under ss. 315 and 318. Although an arbitrator may deliver his award to one of the parties, he ought not to hand over with it the proceedings, depositions, and exhibits. *JAGAT SUNDERI DAS v. SANATAN BYSAK* - - - - - v 357

6. — *Award—Act VIII of 1859, ss. 324, 325—Jurisdiction.* Two out of three arbitrators appointed in the case submitted their award before the Munsif. The defendant, against whom the award had been made, applied to the Munsif to set aside the award on the grounds of corruption and misconduct, and that the award was a nullity, inasmuch as only two out of three arbitrators had made the award. The Munsif overruled the objections, and passed a decree in terms of the award. On appeal to the Judge, the order of the Munsif was set aside on the ground that the award was illegal, as two only of the three arbitrators originally appointed had made the award, and that the evidence did not prove the plaintiff's case. On an application to the High Court to set aside the order of the Judge, — *held*, that, under s. 325, Act VIII of 1859, the Judge had no jurisdiction to set aside the award when the Court of first instance had passed judgment according to the award. *IN THE MATTER OF THE PETITION OF ILAHI BAX*, [v Ap. 75

7. — *Reference to arbitration—Agreement to withdraw suit—Failure to make award—Application for restoration to file of Court.* A suit was, by order of Court, referred to three specified arbitrators, who were to make an award within six months, and in case of difference of opinion all matters in dispute were to be referred to the decision of an umpire. The arbitrators had only one meeting, at which an agreement was come to by the parties to settle all matters in dispute among themselves and withdraw the matters from arbitration, which was accordingly done, but nothing appeared to have been afterwards done. No award was made by the original arbitrators within six months from the refer-

ARBITRATION—continued.

ence. On application by the plaintiff to have the suit restored to the file of the Court, — *held*, that the suit was still pending, the arbitrators not having determined it while they had jurisdiction to do so, and it was ordered that it should be brought again before the Court. *GAPI NATH NANDI v. SHIB CHANDRA NANDI* - - - - - vi Ap. 74

8. — *Award—Procedure—Act VIII of 1859, s. 395.* An award of arbitrators, to be legal, must be completed and signed by each in the presence of the whole of them. *IN THE PETITION OF JAY MANGAL SINGH*, iii A. C. 82

9. — *Award—Act VIII of 1859, s. 327—Omission to sign award at same time.* Where, on a reference to arbitration, the case had been regularly heard by all the arbitrators sitting together, and an award been drawn up and signed by them, the mere omission of the arbitrators to sign the award at the same time and in each other's presence does not invalidate the award. *BHOBOSUNDARI DAS v. MAKHUN LAL DEY* - - - - - viii 128

But see *NORMAN, J.*, in *JAY MANGAL SINGH v. MOHAN RAM MARWARI*, viii 130 note, and 319 note

10. — *Agreement to refer—Refusal of arbitrator to act—Act VIII of 1859, ss. 319 and 326.* Where parties had executed a deed, agreeing to refer all matters in dispute to the arbitration of three persons, and one of the arbitrators refused to continue to act, and the other two consequently refused to proceed with the reference, the Court refused to order the agreement to be filed in Court. *BROOKE v. SUDIAL* - - - - - xii Ap. 13

11. — *Act VIII of 1859, s. 313.* An application for arbitration, as provided by s. 313 of Act VIII of 1859, must be made by all the parties who are materially interested, otherwise it is liable to be declared invalid by the Court, and to be set aside. *BAIKANTHANATH CHATTERJEE v. NAZIRUDDIN* - i S. N. xi

12. — *Award—Omission to fix time for sending in—Act VIII of 1859, s. 318.* Where no time had been fixed in the order directing the award for sending in the award, the award is, under s. 318, Act VIII of 1859, invalid. *GANGAGOBINDA v. KALIPRASANNA NAIK*, [i S. N. xiii

13. — *Act VIII of 1859, s. 316—Difference of opinion—Umpire.* Where a case has been referred to arbitration, but no provision has been made in the reference for any difference of opinion among them as directed by s. 316, Act VIII of 1859, *held*, that the Court, in the case coming before it, and objection being taken to the award, should have ordered that the arbitrators should appoint an umpire; or should have declared that the decision of the majority should prevail; or should have appointed an umpire; or should have made such arrangement as the parties would have consented to; or if they could not agree, such arrangement as it thought fit. When this was not done, and the case came up in special appeal to the High Court,

ARBITRATION—continued.

the case was sent down that it might be submitted to arbitrators again with a distinct order under s. 316. *HARADHAN DATT v. RADHANATH SHAHA* - - ii S. N. xiv

ARGUMENTS ON APPEAL.

See LETTERS PATENT, CL. 15.
REVIEW.

ARMS, POSSESSION OF, WITHOUT LICENSE.

See ACT XXXI OF 1860.

ARRANGEMENT BETWEEN DECREE-HOLDER AND JUDGMENT-DEBTOR.

See DEBTOR AND CREDITOR.

ARREST, EXEMPTION FROM.

See PARDANASHIN WOMEN.

ARREST IN EXECUTION OF DECREE.

See ACT XXIII OF 1861, s. 8.

ARREST OF JUDGMENT—*Act XVIII of 1862, s. 41—Act XIII of 1865—Charge.*] It ought to appear upon the face of a charge that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate, but its not so appearing is a formal defect only, to which objection can only be taken under s. 41 of Act XVIII of 1862 before the jury has been sworn, and it is not ground for arrest of judgment. *QUEEN v. THOMPSON* - i O. Cr. 1

2. — *Act XVIII of 1862, s. 41—Caption of charge—Act XIII of 1865.*] Where the High Court could have directed the preliminary investigation of a charge against *N.* by the Deputy Magistrate of Serampore, but it did not appear in the caption of the charge or in evidence that the Court had so directed it, — *held*, that it was no ground for arrest of judgment, but the objection might have been raised before the jury was sworn under s. 41 of Act XVIII of 1862. *QUEEN v. NABADWIP GOSWAMI* - - - - i O. Cr. 15

ARREST OF NATIVE SUBJECT.

See REG. III OF 1818.

ARREST, PRIVILEGE FROM.

See WITNESSES.

ARREST UNDER WRIT OF ATTACHMENT.

See PAYMENT INTO COURT.

ARTIFICERS.

See ACT XIII OF 1859.

ASSAM, LAW IN.

See HINDU LAW, CUSTOM.

ASSAULT.

See PENAL CODE, s. 352.

ASSAULT, SUIT FOR DAMAGES FOR.

See EVIDENCE.
SPECIAL APPEAL.

ASSESSORS.

See CONVICTION.

LAND ACQUISITION ACT.

2. — *Trial by assessors—Summing up by Judge—Criminal Procedure Code (Act XXV of 1861), s. 379—Reason for Assessors' opinions.*] Although the Criminal Procedure does not expressly provide for summing up of the evidence in a trial with the aid of assessors, there is nothing in the Code to prevent a Judge

ASSESSORS—continued.

from summing up the evidence to the Assessors. Where one of the two assessors says that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner is guilty of all the acts charged, and the other assessor concurs with him, it cannot be said that the assessors have given no reason for their opinion. *QUEEN v. AMIRUDDIN* - vii 68

3. — Where a Judge, in a trial with assessors, summed up the evidence to them as in a trial by jury, — *held*, he had not acted in accordance with the Criminal Procedure Code. *QUEEN v. JOYE POLY* - - - vii 67 note

ASSETS.

See ADMINISTRATION, SUIT FOR.

REPRESENTATIVE OF DECEASED PERSON, SUIT AGAINST.

ASSIGNEE OF BOND.

See REGISTRATION ACT XX OF 1866, s. 53.

ASSIGNEE OF LANDLORD, SUIT BY.

See ACT X OF 1859, s. 24.

ASSIGNMENT OF CHOSE IN ACTION.] *Semble.*—

There is nothing in equity which prevents a suitor, pending a suit, or any other legal proceedings, from assigning the whole or any part of the subject of litigation. *Per PHEAR, J., in GROSE v. AMIRTAMAYI DAS* - iv O. C. 1
See RAMLAL MOOKERJEE v. HARAN CHANDRA DHUR - - - - iii O. C. 180

2. — *Execution of decrees by assignee.*] When a decree is assigned to *A.* for his benefit, in the name of *B.*, the ostensible decree-holder, may take out execution. *PURNA CHANDRA ROY v. ABHAYA CHANDRA ROY*, iv Ap. 40

3. — *Purchaser, appeal by.*] The purchaser of the right, title, and interest of a defendant in a suit in and to the land the subject-matter of that suit, has no right as such to appeal from a decree passed against the defendant. *GAJADHAR PRASAD v. GANESH TEWARI* - - - - vii 149

ASSIGNMENT OF JUDGMENT-DEBT, EFFECT OF.

See MORTGAGE.

ASSIGNMENT OF NEGOTIABLE INSTRUMENT TO ALLOW THIRD PERSON TO SUE.

See PROMISSORY NOTE.

ATTACHED PROPERTY, FAILURE TO RETURN ON SATISFACTION OF DECREE.

See NAZIR, LIABILITY OF.

ATTACHMENT.

See ACT XI OF 1859, s. 5.

CIVIL PROCEDURE CODE, s. 92,
s. 233, s. 240, s. 243.

EQUITY OF REDEMPTION.

FORFEITURE OF PROPERTY.

INSOLVENCY.

SALE IN EXECUTION OF DECREE,

2. — *Sale in execution of decrees.*] Under the Code of Civil Procedure, property may be attached without view to immediate sale. *SARODA PRASAD MULLICK v. LUTCHMEPUT SINGH DOOGUR* - - - - i P. C. 214

ATTACHMENT—continued.

3. — *Civil Procedure Code, s. 240—Validity of attachment—Ex parte decree.*] The effect of granting an application under s. 119 of Act VIII of 1859 is to declare that there has not been yet a valid decree in the suit, and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid. *A.* obtained a decree *ex parte* against *B.* Property belonging to *B.* was attached in execution. While under attachment, *B.* sold the property to *C.* Afterwards *B.* applied for, and obtained an order, under s. 119 of Act VIII of 1859, to set aside *A.*'s decree and for a new trial. *Held*, that *C.*'s purchase was not null and void under s. 240 of Act VIII of 1859. **LALA JAGAT NARAYAN v. TULSIRAM** - 1 A. C. 71

4. — *Execution sale—Incumbrance pending attachment—Right of purchaser at sale at instance of second attaching creditor.*] The purchaser of the right, title, and interest of a judgment-debtor in certain immoveable property at an auction-sale, which took place at the instance of a second attaching creditor, was held to take the property subject to an incumbrance created by the judgment-debtor pending the first, but prior to the second, attachment, although the first attaching creditor was first paid out of the proceeds of the sale. *Quære.*—Whether the sale ought not to have been under the first attachment as against which the incumbrance would have been void? **GURU PRASAD SAHU v. MURST. BINDA BIBI,** [ix 180]

5. — *Bona fide private alienation—Act VIII of 1859, s. 240.*] *Held* (MARKBY, J, dissenting), that a private *bona fide* alienation for value of property attached under Act VIII of 1859, made during the continuance of the attachment, is, by s. 240 of that Act, null and void only as against the attaching creditor or persons who may acquire rights under or through the attachment, and not as against the whole world. **ANANDO LALL DASS v. RADHAMOHUN SHAW** - - - ii F. B. 49

Same case affirmed in the Privy Council, x 134 **RAM CHARAN LAL v. JHATU SAHU**, xii 413 note

6. — *Alienation pending attachment in execution of decree—Effect of removal of attachment—Execution struck off from laches of decree-holder.*] Certain property was attached in execution of a decree, and while the attachment was in force pattas were granted to certain persons by the judgment-debtors. Twelve years after the attachment, no further steps having been taken in the matter, the execution case was struck off the file, and the property was afterwards mortgaged by the judgment-debtors to *R.* Subsequently, a fresh attachment was issued at the instance of the heirs of the former attaching-creditor, under which the property was put up for sale subject to *R.*'s mortgage, and *R.* herself became the purchaser. In a suit by *R.* to set aside the pattas granted during the continuance of the first attachment, *held*, that the prohibition against alienation of property under attach-

ATTACHMENT—continued.

ment avoids such alienation only as against the execution-creditor or persons entitled to claim under him. A conveyance executed by the judgment-debtor after an attachment has been removed, and before a fresh attachment is issued, is valid, though the second attachment is under the same execution as the first. *Quære.*—Whether an alienation of property under attachment void as against the execution-creditor becomes valid by relation when the attachment is removed? *Semble.*—It may be presumed that an execution long neglected, and finally struck off, has ceased to be operative, and in that case a judgment-creditor's title will only date from any subsequent attachment which he may obtain. **PUDDOMONEE DOSSEE v. ROY MUTHOORANATH CHOWDHRY,** [xii P. C. 411]

7. — A deed of alienation of certain property made pending an attachment of the property, was held not to become valid by reason of the removal of the attachment. It does not follow because subsequent applications for attachment are made by a decree-holder that the original one is abandoned. **MAHATAB CHAND BAHADUR v. SURNOMOYEE DOSSEE,** [xii 414 note]

8. — *Alienation—Decree for money payable by instalments—Act VIII of 1859, ss. 240, 243, 245.*] *A.* obtained a decree against *B.* for a sum payable by instalments. *B.* made default in payment of an instalment, and *A.* attached certain immoveable property belonging to *B.* While under attachment, *B.* sold the property to *C.*, and out of the proceeds paid into Court the full amount of the debt then due and for which the property had been attached. *A.* took out the money, but applied for and obtained an order from the Munsif that the property should remain under attachment, in order to satisfy any future sum which should fall due under the decree and in payment of which *B.* should make default. *B.* failed to pay a further instalment when due, and *A.* obtained an order for sale of the property. *A.* himself became the purchaser, and was put in possession by the Court, notwithstanding the claim of *C.*, who had been in possession ever since his purchase. In a suit by *C.* to recover possession, *held*, the Court had no power to make the order continuing the attachment, the right of attachment being only for sums actually due, and the whole amount for which execution issued being satisfied out of the proceeds, the alienation of the property to *C.* was not void as against *A.* **RAMDHAN MITTER v. KAILAS NATH DUTT,** [iv A. C. 20]

9. — *Alienation—Suit for money paid to stay foreclosure—Act VIII of 1859, s. 240—Mortgage—Lien.*] In execution of a decree, *A.*, the judgment-creditor, obtained an order for the attachment of certain property of *B.*, the judgment-debtor, but it was not executed as required by Act VIII of 1859. The property was, however, advertised for sale, and *B.* obtained an order staying the sale, on a peti-

ATTACHMENT—continued.

tion alleging that A. had agreed to give him time on condition that the attachment should remain good, and declaring that he (B.) would not alienate the property until the whole of the decree was satisfied. Subsequently B. mortgaged a portion of this property to C. A. assigned his decree to D., upon whose application the property was attached and sold, and E. became the purchaser. C. having taken steps to foreclose the mortgage, E., to prevent such foreclosure, paid the amount into Court. *Held*, that E. could not maintain a suit against C. to recover the amount so paid by him. The mortgage by B. was not an alienation null and void under s. 240, Act VIII of 1859. B.'s petition did not create a charge upon the property in favour of A. **RAMESWAR SING v. RAMTANU GHOSE,**

[iv A. C. 24]

10. — *Priority — Right of first attaching creditor to proceed against other property of debtor after sale of the property by second attaching creditor.* A. attached certain lands in execution of a decree. The judgment-debtor applied for time to raise the money by way of mortgage or otherwise, and A. allowing this, the sale was postponed, but the attachment subsisted. Subsequently, another creditor, B., attached and brought the same property to sale. A. now sought to attach and sell other property belonging to the judgment-debtor. There was nothing to show that the surplus sale proceeds were sufficient to satisfy A.'s claim. *Held*, that A. was entitled to proceed against other property of the judgment-debtor in satisfaction of his decree. **KALI PERSHAD DUTT v. RAJAH MAHOMED JAWAHUR JUMNA KHAN** — x Ap. 9

11. — *Act VIII of 1859, s. 270—Execution of decrees—Striking off execution case—Money-decree.* A. obtained a decree against C. for possession and mesne profits, but no specific amount of mesne profits was then assessed. In 1864 A., in execution of his decree, attached land belonging to C., but the execution case was struck off the file in 1865. After several ineffectual proceedings, A. re-attached the property in March, 1869. In execution of a decree against C., B. had, in February, 1869, attached the same property. The property was sold under A.'s attachment in May, 1839, and on the application of A., the Subordinate Judge, on the strength of A.'s attachment in 1864, gave priority to A.'s claim over that of B. The balance of the sale proceeds, after satisfaction of A.'s decree, was only sufficient to cover a small portion of the decree obtained by B. In a suit by B. against A., under s. 370, Act VIII of 1859, to recover the amount of her claim which remained unsatisfied,—*held*, that the attachment of A. in 1864, on the strength of which A.'s claim was considered by the Subordinate Judge to have priority over that of B., was not a sufficient and valid attachment under s. 270. The attachment contemplated by that section means an attachment after a final money-decree. *Held*

ATTACHMENT—continued.

also, that the striking off of the execution case of A. in 1865 caused an extinguishment of the effect of the attachment of 1864. **BINDA BIBEE v. LALLA GOPEENATH** — xiv 323

12. — *Striking off execution case.* The striking off of an execution proceeding affects only the files of the Court and the application for sale, and does not interfere with the continuance of any attachment under the decree which is executed. **NAZIR HOSSEIN v. PEAROO THEOVILDAREE** — xiv 425 note

13. — *Duration of attachment.* If property is once attached, the attachment will subsist, if not expressly abandoned by the party at whose suit it was issued, until an order is issued for its withdrawal, even although no further steps are taken on the attachment within a reasonable period. A mere striking of the execution case off the file by the Court, of its own motion, without notice to or consent of parties, will not invalidate an attachment. **JHATU SAHU v. RAMCHARAN LAL** — iii Ap. 68
RAMCHARAN LAL v. JHATU SAHU, xii 413 note

14. — *Striking off execution case—Release from attachment.* The striking off of a case from the file, while pending in execution, does not release a property from attachment. **GOLAM YABEYA v. SHAMA SUNDARI KUARI,** [iii Ap. 134]

15. — *Execution of decrees—Priority of attachment—Attachment before judgment—Act VIII of 1859, ss. 89 and 270.* Where the decree-holders in two different suits against the same defendant attached the property of the judgment-debtor in execution at one and the same time,—*held* (NORMAN, J., dissenting), that they were entitled to be paid rateably out of the proceeds of sale, notwithstanding that the property had been attached by the decree-holder in one suit before judgment. **SRI RAMMANIK v. TINOWRI RAI** — iv F. B. 63

16. — *Proceeds of sale—Distribution of, among creditors—Act VIII of 1859, ss. 270, 271.* A creditor holding several decrees against the same judgment-debtor cannot take out simultaneous attachments against that debtor's property, so as to entitle him to have all his decrees paid in full, to the exclusion of other attaching creditors. He can only be regarded as first attaching creditor in respect of one of the decrees which he held. **RADHA GOBIND SHAHA v. TAWKU JEMADAR** — ii A. C. 100

17. — *Property subject to attachment—Salaries of Railway Company's servants—Jurisdiction of Mofussil Small Cause Courts—Act VIII of 1859, ss. 236, 239.* Salaries or other debts due from the Railway Company to any of its servants can be attached in satisfaction of a Small Cause Court decree under Act VIII of 1859, s. 236. The attaching Court must make a written order to be fixed up in some conspicuous part of the Court-house, and a copy is to be delivered or sent registered by post to the debtor. The registered letter should be addressed to the Agent of the Railway Company at the head office of the Company.

ATTACHMENT—continued.

It need not be sent through the High Court, although the head office is within the jurisdiction of the High Court. **IN THE MATTER OF HOLLOCK** - - - - - ii A. C. 109

18. — *Act VIII of 1859, ss. 236, 237—Money paid to Sirdar as wages of coolies.* The defendants were sirdars of coolies. A decree was obtained against them by the plaintiff in respect of goods supplied for the coolies. It was proved that, by virtue of custom, a sirdar of coolies was entitled to have the wages of coolies paid to him, so that he might deduct the amounts due to him by the respective coolies for food supplied by him to them; but it was not found that the coolies were hired on the basis of such custom. In execution of the decree an order was made upon the officer of the Public Works Department in whose employ the coolies were, attaching "all monies which are or may become payable to the debtors, whether on their own personal account or on account of the coolies over whom they were sirdars." *Held*, the attachment could not be maintained. The wages of the coolies were not liable to attachment under ss. 236 or 237 of Act VIII of 1859. **SAJIWAN v. GOPAL** - - - - - i S. N. xv

19. — *Act VIII of 1859, s. 205, and ss. 233, 234—Partnership property.* A decree-holder, who was also a partner of the judgment-debtor, sought to attach, in execution of his decree, the share of the judgment-debtor in the assets of the partnership business, the business then being in the hands of the Receiver of the Court under a decree for dissolution and winding up. *Held*, that such share of the judgment-debtor was not 'property' within the meaning of s. 205 of Act VIII of 1859, and, therefore, not liable to attachment in execution. **ABBOTT v. ABBOTT and CRUMP** - - - - - v 382

20. — *Act VIII of 1859, ss. 233, 234.* A decree-holder, in execution, attached and seized certain property which belonged to the judgment-debtor in partnership with another person, who alone, at the time of attachment, was in actual possession. *Held*, that such property was the subject of attachment in execution of the decree against the one partner, but such attachment must be limited to his share, and the attachment should be by prohibitory order, not by actual manual seizure. **THAMA SING v. KALIDAS ROY** - - - - - v 386

21. — *Act VIII of 1859, ss. 205, 243—Attachment of future maintenance, or "Baboo-ana"—Procedure.* Where a judgment-debtor was possessed of a decree entitling him to maintenance from a third party, *held*, that his judgment-creditor could attach the amount before it accrued due, by prohibitory order forbidding such third party to pay the judgment-debtor, and directing him to pay to such person only as the Court might direct; or an arrangement might be made for the collection or administration, if necessary, of the amount of maintenance. **MANISWAR DAS v. BIR PERTAB SAHU** - - - - - vi 446

ATTACHMENT—continued.

22. — *Property, definition of—Claim under pending award.* Under s. 205 of the Civil Procedure Code, sums to be attached must not be inchoate, but existing and definite; and although liquidated demands in their nature definite and certain, though *sub lite*, and unproved, may be seized; a mere expectancy or a mere right of suit cannot be attached; the attachment must operate at the time of attachment, and not be anticipatory, so as to fasten on some future state of property in which the suit may result. A claim which may accrue under a pending award cannot be sold in execution. **TUFFAZAL HOSSEIN KHAN v. RAGHUNATH PRASAD** - - - - - vii P. C. 186

23. — *Act VIII of 1859, s. 205—Decree—'Other property.'* A decree of Court falls within the description of "other property" in s. 205 of the Civil Procedure Code, and is, therefore, liable to attachment, which should be made under s. 237. **GHOLAM MAHOMED v. INDRA CHAND JAHURI** - - - - - vii 818

24. — *Act VIII of 1859, s. 205—Property, right of—Hindu heir expectant on death of widow.* The interest of an heir, according to the Hindu law, expectant on the death of a widow in possession, is not property, and, therefore, not liable to attachment and sale in execution of a decree under s. 205 of Act VIII of 1859. **RAM CHANDRA TANTRA DAS v. DHARMO NARAYAN CHUCKERBUTTY**, [vi F. B. 341]

But see **GAUR HARI DUTT v. RADHA GOBIND SHAHA** - - - - - vii 343 note

ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE, s. 81.

ATTACHMENT OF FRACTIONAL SHARE IN PROPERTY.

See CIVIL PROCEDURE CODE, s. 246.

ATTACHMENT OF PERSON.

See EXECUTION OF DECREE.
ONUS PROBANDI.

ATTACHMENT OF PROPERTY PENDING APPEAL.]

A plaintiff, before judgment, attached defendant's property, but the suit was dismissed by the High Court on appeal. He filed an appeal to the Privy Council; and on his application, the High Court *held*, that it could not continue the attachment over the defendant's property pending the appeal of the plaintiff to the Privy Council; nor could it call on the defendant, respondent, to give security for the value of the property attached before being allowed to remove it. **IN RE DITTA HARAKMAN SING**, [iii F. B. 45]

ATTACHMENT OF RESPONDENT.

See DIVORCE ACT.

ATTACHMENT, REMOVAL OF,

See CIVIL PROCEDURE CODE, s. 246.

ATTEMPT TO COMMIT OFFENCE—Mischief by fire—Criminal Procedure Code (Act XXV of 1861), s. 511—Possession of a fire-ball. *Held* by GLOVER, J., that incendiaryism having, on several occasions, occurred in a village, produced by a ball of rag, with a piece of burn-

ATTEMPT TO COMMIT OFFENCE—continued.

ing charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held* by MITTER, J., that the possession of a fire-ball and moving about with it cannot support a conviction under ss. 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it. *QUEEN v. DAYAL BAWRI*, iii A. Cr. 55

ATTESTATION.

See WILL.

ATTORNEY.

See LETTERS PATENT, CL. 10.

PRIVILEGED COMMUNICATION.

TAXATION OF BILL OF COSTS.

WITNESSES.

2. — Striking off the roll—Misconduct.]

Where an attorney knowingly prepares a conveyance containing untrue recitals of the transaction between the parties thereto, and attests the deed and a receipt for consideration-money, which, to his knowledge, was never paid, or intended to be paid, the production of such a document to the Court is sufficient ground for calling upon the attorney for an explanation of his conduct. But if such explanation be given, supported by evidence to the effect that there was no fraudulent intent, and if no fraudulent use of the deed has, in fact, been made or attempted, nor any injury caused thereby, it is not sufficient ground for striking the attorney off the rolls of the Court. *Semble.*—The High Court in Calcutta is not authorized in striking an attorney off the rolls when such a step would not be sanctioned by the practice of the Courts in England. *IN THE MATTER OF STEWART* - - - - - i P. C. 55

ATTORNEY AND CLIENT.

See VENDOR AND PURCHASER.

2. — Delivery of bill of costs — Right to maintain suit — Executor.] There is no law in force in India to prevent an executor of an attorney from maintaining a suit for business done by the attorney, without having previously delivered a bill of costs to the defendant, and left it with him for a reasonable time before bringing the action; and the fact that the defendant had notice that the bill was to be referred to taxation is immaterial. *WILKINSON v. ABHAS SIRCAR* - iii O. C. 90

ATTORNEY AND CLIENT—continued.

3. — Costs — Lien on sum recovered by client—Attachment of fund by creditor.] The plaintiff obtained a decree against the defendant, but, before satisfaction of the decree, the amount of the decree was attached in the hands of the defendant by a third person, who had obtained a decree in a suit against the plaintiff. On an application by the attorney for the plaintiff that the defendant might be ordered to pay to him his costs of suits out of the sum which had been attached in the defendant's hands, and on which the attorney claimed to have a lien, the Court held, that the attorney had a lien for his costs on the sum so attached, but that the only order it could make was an order to the defendant not to pay the sum attached to any one without notice to the attorney. *THE NAWAB NAZIM OF BENGAL v. HEERLALL SEAL* - - - - - x 444

4. — Vakil — Purchase by attorney from client—Benami transaction.] The principle that in transactions carried out by an attorney for a client, the attorney should derive no benefit to himself, is equally applicable to the relationship of vakil and client; and in transactions of such a nature Courts should be careful not to allow them to be enforced in the name of a third person put forward as the real plaintiff. *FUZELUN BIBEE v. OMDAH BIBEE* xi 60 note

5. — Lien for Costs—Title-deeds delivered for specific purpose—Right to re-delivery.] D., an attorney, who had a lien against C. for costs on the title-deeds of certain property belonging to C. for whom he had been acting in negotiations for the sale of the property, delivered the deeds at the request of C. to M., who was acting as attorney for J., an intending purchaser. M., on obtaining the deeds, signed a receipt for them, by which he undertook to "return them on demand without claiming any lien for costs or otherwise." D. subsequently ceased to act for C. in the matter of the sale of the property, of which J. became the purchaser. The title-deeds remained with M. *Held*, that D. was entitled to have re-delivery of the deeds to him from M., even independently of the express contract to return them. He did not give up possession of them to C. by delivering them to M., though that was done at C.'s request. *IN THE MATTER OF MACKERTICH* - - - - - xv Ap. 15

AUTREFOIS ACQUIT, PLEA OF.

See PENAL CODE, s. 352.

AVA, KINGDOM OF.

See CIVIL PROCEDURE CODE, s. 177.

AWARD.

See ARBITRATION.

SPECIAL APPEAL.

SURVEY AWARD.

THAKBUST AWARD.

AWARD, APPLICATION TO FILE.

See COSTS.

AWARD, CLAIM UNDER.

See ATTACHMENT.

BAD FAITH.

See CIVIL PROCEDURE CODE, s. 281.

RAIBIL-WAFA.

See MORTGAGE.

BAIL FOR APPEARANCE OF PARTY—*Criminal Procedure Code (Act XXV of 1861), s. 212—Act X of 1872, s. 389—Discharge for want of evidence.* The accused in a case of dacoity and assault were discharged by the Magistrate for want of evidence. At the same time he ordered them to give security to the amount of Rs. 250 to appear before him any time within six months if called upon. The Judge referred the question of the legality of the order to the High Court, by whom the order for security was quashed. *RAMLAL TEWARI v. SUPHARAM* - - - - - i S. N. xxvi

2. — *Criminal Procedure Code (Act XXV of 1861), ss. 436, 411—Accused Person—Power of Sessions Court to admit to bail.* A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under s. 411 of Act XXV of 1861, is not an accused person within the meaning of s. 436 of the same Act, so as to be admitted to bail by the Court of Session, when his case is referred to the High Court under s. 434 of the same Act. *QUEEN v. MAHENDRANARAYAN BANGABHUSAN* - - - - - i A. Cr. 7

BAILMENT—*Non-delivery of goods—Bailee—Onus probandi.* A. sent cotton to B.'s screw-house, to be screwed. It was placed in B.'s godowns, in charge of which was a servant of B.'s, who kept entries of cotton received and given out. B.'s durwan kept the key of the godowns. B. provided dunnage; no rent was paid for godown room, but it was shown that, on several occasions when cotton had been left by owners for some time in the godowns and removed unscrewed, rent had been paid; and it was allowed that it was for the mutual interest of both parties that the cotton should be so kept. The custom was that the screwing charges should be paid by the purchasers of cotton, to whom it was delivered by B, by the direction of the vendors. In an action by A., for the non-delivery of some of his cotton, — *held per* NORMAN, J., that B. was a gratuitous bailee of the goods, and that he was only bound to account for the manner in which they had been kept, which he had satisfactorily done. A.'s suit must be dismissed. Decree affirmed on appeal; but *per* PEACOCK, C.J. *Quære.*—Was B. a bailee at all? *Per* MARKBY, J.—B. was a bailee for custody, but not a gratuitous bailee. *MOOLCHAND v. ROBINSON* - i O. C. 68

2. — *Possession—Seizure of goods—Interpleader suit—Costs—Execution of decrees of Small Cause Court—Act IX of 1850, s. 88.* A. obtained a decree in the Small Cause Court against B. In execution of the decree, goods belonging to B., but in the possession of a pledgee, were seized by a bailiff of the Small Cause Court. The pledgee brought an interpleader suit, under s. 88 of Act IX of 1850, to recover the goods. *Held*, the pledgee was entitled to have the goods released to him and to

BAILMENT—continued.

have the costs of his suit paid by the execution-creditor. *BHINJI GOVINDJI v. MONOHAR DASS* - - - - - v Ap. 31

BALANCE OF ACCOUNT.

See LIMITATION ACT XIV OF 1859, s. 8.

BALANCE OF ACCOUNT, SUIT AGAINST REPRESENTATIVES OF GOMASTA FOR.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 16.

BANIAN, LIABILITY OF.

See PRINCIPAL AND AGENT.

BANIAN, LIEN OF, ON GOODS UNDER AGREEMENT WITH FIRM.

See PARTNERSHIP.

BANK OF BENGAL—*Act IV of 1862, s. 10—Loans and advances on security of land—Security for past loan.* The prohibition contained in s. 30 of Act IV of 1862, which regulates the Bank of Bengal against making loans and advances on the security of land, is no prohibition against the Bank taking land as security for a past loan and an existing debt. *IBRAHIM AZIM v. CRUIKSHANK* - - - vii 653

BANKRUPTCY ACT, 1869.

See INSOLVENT ACT, s. 40.

BARRISTER.

See ADVOCATE.
COUNSEL.

BENAMI LEASE.

See PARTIES.

BENAMI PURCHASE.

See ATTORNEY AND CLIENT.
CIVIL PROCEDURE CODE, s. 260.
PARTIES.
RES JUDICATA.

2. — *Source of purchase-money—Hindu and Mahomedan Law—Presumption.* In cases where the question is, whether property bought and held in the name of another than the party claiming as the real purchaser, is the property of that other, or merely bought and held in his name (benami) for the claimant, the criterion is to consider from what source the purchase-money came; the presumption is, that a purchase made with the money of A. in the name of B. is for the benefit of A.; and where the purchase is by a father, whether Mahomedan or Hindu, in the name of his son, there is no presumption of an advancement in favour of the son. Upon the facts, the decision of the Courts below reversed. *AZHAR ALI v. ALTAF FATIMA* - - - - - iv. P. C. 1

3. — *Presumption—Creditors claiming against benamidar—Evidence.* Although a purchase by a Mahomedan with his own money of an estate in the name of his son raises a presumption of the son's name being used benami for his father, proof that the father's object was to affect the ordinary rule of succession as from him to that property is sufficient to give, as respects strangers, a title to the son independent of and adverse to the father. Where *bonâ fide* creditors of the

BENAMI PURCHASE—continued.

ostensible owner of property are claimants on that property, the Court will require strict proof on the part of any one seeking to have it declared that he held it only benami. **RUKNADAWLA NOWAB AHMED ALI KHAN v. HURDWARI MULL** - - - - - v 578

4. — *Execution of decree—Assignment of decree.* When a decree is assigned to A. for his benefit in the name of B., B., the ostensible decree-holder, may take out execution. **PURNA CHANDRA ROY v. ABHAYA CHANDRA ROY** - - - - - iv Ap. 40

5. — *Purchase by Hindu widow for a relation—Onus probandi.* A step-son made over property to his step-mother for her support. Out of the produce she bought properties for her nephew in the name of other parties. *Held*, under the circumstances, that the purchased property, on her death, went to the nephew, and not to the step-son as heir of her husband. Although the defendant, by his written statement, denied the fact of the purchases being with the widow's money, and it was proved that they were made with her money, — *held*, that this did not remove from the plaintiff the burden of proving that the purchases were made benami for her. **CHANDRANATH ROY v. RUMJAI MUZUMDAR**, [vi P.C. 303]

6. — *Title to property seized in execution—Evidence—Suspicion.* In determining the right to property seized in execution, the Court must not declare a person claiming as purchaser to be a benamidar for the debtor upon suspicion merely, but its decision must rest upon legal grounds established by legal testimony. **FAEZ BUX CHOWDHRY v. FAKIBUDDIN MAHOMED AHASAN CHOWDHRY** ix P. C. 456

BENAMI TRANSACTION.

See LIMITATION ACT XIV OF 1859, s. 2.

BENG. ACT VI OF 1862, s. 4 — Deposit of arrears—Tender—Registration of transfer—Act X of 1859, s. 27. O. S. purchased from the former ryot his jotdari right, and entered into possession of the land. H. M., the talookdar, had notice of this; but while O. S. was in possession, he sued the former tenant, and obtained a decree against him for arrears of rent, under which he sold the tenure in execution. O. S. had deposited the amount of the arrears, but by mistake as payable to "D. (the wife of H. M.'s brother) of Lodi Syndpore," instead of to "H. M., of Lodi Culpoo." H. M. was aware the amount had been deposited. *Held*, the deposit was a sufficient tender under s. 4, Beng. Act VI of 1862, and that registration of the transfer of the ryoti tenure was not necessary, inasmuch as s. 27 of Act X of 1859 did not apply, the tenure not being one "intermediate between the zemindar and the cultivator." **UMACHARAN SETT v. HARIPROSAD MISRY** - - - - - i S. N. vii

—, s. 9.

See APPEAL.

MEASUREMENT OF LANDS.

BENG. ACT VI OF 1862, s. 10.

See MEASUREMENT OF LANDS.

—, s. 11.

See APPEAL.

MEASUREMENT OF LANDS.

—, s. 19—*Jurisdiction of Deputy Collector—Power of hearing appeal—Act X of 1859, s. 150.* A Deputy Collector cannot, under s. 19 of the Beng. Act VI of 1862, hear an appeal from the judgment of another Deputy Collector, even if the case is referred to him by a Collector. *Semble*.—The object of that section was to give to Deputy Collectors specially entrusted with such powers all the powers which were conferred on Deputy Collectors upon reference by the Collector, or on Deputy Collectors placed in charge of sub-divisions without such reference. **KALLY NARAIN ROY CHOWDHRY v. SADRUNNISSA KHATOON** - - - Sup. Vol. 610

—, s. 20—*Act X of 1859, s. 162—Jurisdiction—Revenue Courts—Subdivision of district—Power of Collector to withdraw or transfer suits.* Suits under Act X of 1859 must be preferred in the Revenue office of the district, or when a sub-division of the district has been placed under a Deputy Collector, in the Revenue office of the sub-division in which the cause of action arose. The authority given to the Collector to withdraw any suit from any Deputy Collector, and try it himself, or refer it to another Deputy Collector, does not cure the defect caused by the institution of the suit in a Court other than that of the sub-division in which the cause of action arose. **PURNA CHANDRA CHATTERJEE v. MACARTHUR**, [iii A. C. 366]

2. — *Act X of 1859, s. 162—Suit for rent.* Under s. 20 of Beng. Act VI of 1862, suits under that Act, or under Act X of 1859, must be instituted in the Revenue office of a sub-division of a district where there is a sub-division, and not in the Revenue office of the district. But where a suit has been brought in the Revenue office of the district where there is a sub-division, and has been referred by the Collector to another Deputy Collector, the decree is not absolutely void for want of jurisdiction, but only voidable at the instance of the defendant. **MACKINTOSH v. KASHINATH BISWAS** - - - xiii F. B. 438

BENG. ACT V OF 1863, ss. 4 and 8.

See NAZIR, LIABILITY OF.

BENG. ACT VI OF 1863, ss. 151, 236, 239, and 230 — Liability of Justices for compensation for damage in making sewers, &c.—Negligence—Amount of damages—Writ of mandamus. By s. 151, Beng. Act VI of 1863, the Justices are empowered in making any main or sewers for the drainage of Calcutta, "to carry such sewers through, across, or under any street, or any place laid out as or intended for a street, or any cellar or vault which may be under any of the streets, and (after reasonable notice in writing in that behalf) into, through, or under any enclosed or other land whatsoever, making full compensation for any damage done thereby; and if any

BENG. ACT VI OF 1863, ss. 151, 226, 229, and 230—continued.

dispute shall arise touching the amount or apportionment of such compensation, the same shall be settled in the manner hereinafter provided for the settlement of disputes respecting damages and expenses." S. 229 provides that "in all cases where any damages, costs, or expenses are by this Act directed to be paid, the amount of the same, in case of dispute, shall be ascertained and determined by a Judge of the Calcutta Court of Small Causes." S. 226 provides that a month's notice shall be given before any action is brought under the Act against the Justices. By Act V of 1857 the Oriental Gas Company was empowered to lay down pipes and execute other necessary works for the supply of gas to Calcutta. In an application by the Company for a writ of mandamus to compel the Justices to join with the Company in referring to a Judge of the Small Cause Court to ascertain the amount payable to the Company as compensation for damage alleged to have been occasioned to their pipes, &c., by the drainage works of the Justices, an affidavit was filed, in which the Company's manager stated specifically the loss that had been occasioned, and that he had, on personal inspection, satisfied himself that the loss was occasioned by the negligent execution of the drainage works of the Justices. The affidavit on behalf of the Justices stated that, "in carrying out such drainage works, the Justices, or their contractors, agents, or servants, have not damaged the pipes, &c., of the Company, and that the Justices deny that they are in any manner liable for the damage in respect of which compensation is sought by the Company, or that they have done or caused any damage to the Company." *Held* (*per* PHEAR, J.), on the facts, that the Justices' works had caused damage to the Company's main and pipes. *Held* also, that the compensation-clause of s. 151, Beng. Act VI of 1863, makes the Justices liable to compensate owners of land, or of any interest in land through which the drainage works are authorized to be carried, for any damage caused by any proceedings in such works. It applies to cases where the works have been done with due care and skill, and where, but for the Act, there would have been a right of action against the Justices. *Held* also, that the denial of liability by the Justices was simply a general denial that any damage had been done to the Company; the question, therefore, between the parties resolved itself into a dispute as to the amount of damage, which, by s. 151, must be settled in the manner provided by s. 229. Hence the Company was entitled to a writ of mandamus. *Held* also, that s. 226 applies to proceedings *dehors* the Act, and not to proceedings taken to enforce compliance with the provisions of the Act. JUSTICES OF THE PEACE FOR CALCUTTA v. THE ORIENTAL GAS COMPANY - - - viii 433

—, s. 226—*Suit against Justices for damage in repairing drains—Contractors—Negligence—Cause of action—Notice of action.* In

BENG. ACT VI OF 1863, s. 226—continued.

a suit for alleged damage done to the plaintiff's premises by excavations for drainage purposes, which the Justices are authorized to make by Beng. Act VI of 1863, it being shown that the Justices had entrusted the execution of the work to skilled and competent contractors,—*held*, the Justices were not liable. In such a suit no cause of action will be allowed to be raised, except that disclosed in the notice of action required to be given to the Justices by s. 226 of the Act. ULLMAN v. THE JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA - - - viii 265

BENG. ACT III OF 1864, s. 67—*Fine for suffering premises to be in filthy state—Owners and occupiers.* The Municipal Commissioners are empowered under s. 67, Beng. Act III of 1864, to fine either the owner or occupier of the land who suffered it to be in a filthy state. Where the land was occupied by tenants, and the owner admittedly lived in another district, and there was nothing to show that he suffered the land to be in a filthy state, *held*, that the imposition of a fine on the owner was not a proper exercise of the discretion given by s. 67 of the Act. QUEEN v. RAMDYAL SING,

[viii Ap. 9

—, s. 87—*Suit against Municipal Commissioners for possession of land.* Previous to the institution of the present suit, one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro forma* defendants in the suit. This suit was dismissed as barred by the law of limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land, on the allegation that his tenant had relinquished the land within three months in consequence of his having been dispossessed by the Municipal Commissioners. *Held*, that s. 87, Beng. Act III of 1864, did not apply. *Scindle.*—Beng. Act III of 1864, s. 87, relates only to actions brought in respect of acts done by the Commissioners under that Act for the purpose of the Act. PRICE v. KHALAT CHANDRA GHOSH - - - v Ap. 50

BENG. ACT V OF 1864, s. 16.

See OBSTRUCTING NAVIGATION.

BENG. ACT VII OF 1864, ss. 12 and 16—*Confiscation of salt found without rowana or pass—Intention to sell.* If salt exceeding five seers is found within the limits prescribed by s. 12 of Beng. Act VII of 1864, unprotected by a rowana or pass, the salt is contraband, and liable to seizure, and the parties transporting it are punishable under s. 16. It matters not whether any attempt or intention to sell is proved or not. QUEEN v. OFATULLA - vi 381

BENG. ACT VI OF 1865, ss. 31 and 32—*Protector of Labourers, powers of—Wages of labourers—Mode of taking account—Criminal Procedure Code (XXV of 1861), s. 444.* *Held*, that until an enquiry is made under s. 31, Beng. Act VI of 1865, the Protector of Labourers is not compe-

BENG. ACT VI OF 1865, ss. 31 and 32—continued.

tent to act under s. 32; that the procedure under s. 31 must be conducted in accordance with s. 444 of the Criminal Procedure Code; that to support a conviction under s. 32, Beng. Act VI of 1865, it must be shown that the wages or part of the wages due have remained unpaid for more than six months. But in an account current, the payments are not to be appropriated for the wages of the month in which the payment was made. **IN THE MATTER OF THE NORTHERN ASSAM TEA COMPANY,**

[iii A. Cr. 30.]

BENG. ACT VII OF 1865, s. 7—Slaughter-house license—Transfer of slaughter-house.] *R.* was fined by the Deputy Magistrate for using an unlicensed slaughter-house. He subsequently gave an ijara or lease to *A.* to carry on the business. *R.* was prosecuted again for evading the law by "slaughtering cattle or allowing cattle to be slaughtered" without a license. He was fined Rs. 200 by the Deputy Magistrate. On appeal to the Sessions Judge he was acquitted. On the motion of the Municipal Commissioners for a rule to set aside the order of the Sessions Judge, it was held (*per JACKSON, J.*), that *R.*, by giving a lease to *A.*, had parted with his interest, and had ceased to have any power to allow or disallow the slaughtering of cattle; that s. 7 provides penalties only, and does not describe an offence or relate to a conviction. It is quite another question whether the act itself is an offence irrespective of s. 7, and whether *R.* could be dealt with as an abettor. *Per MITTER, J.* (dissenting).—The Judge has found that the lease was given by *R.* with the avowed object of continuing the slaughter-house, and admittedly for the express purpose of evading the law; the case, therefore, falls within the express words of the section, "or allows cattle to be slaughtered." **IN THE MATTER OF THE PETITION OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA** —

— vi Ap. 28

BENG. ACT VIII OF 1865, s. 16.

See SALE FOR ARREARS OF RENT.

2. — *Sale for arrears of rent—Incumbrances.* The sale of a tenure, under s. 16, Beng. Act VIII of 1865, does not *ipso facto* annul all incumbrances, but certain incumbrances are recognized by this section to survive such sale. **UMASUNDARI DAS v. BIRBUL MANDAL,**

[iii A. C. 183]

3. — *Sale of tenure for arrears of rent—Incumbrances.* At a sale held under Beng. Act VIII of 1865, the defendant purchased a shikmee tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands, and hence the suit by the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Raja of Tipperah, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmeedar, and not the Raja, had granted the lands in dispute as bramatar, but

BENG. ACT VIII OF 1865, s. 16—continued.

not in favour of the person through whom the plaintiff claimed. It, however, passed a decree in favour of the plaintiff, as he had been unlawfully dispossessed. *Held* that, under s. 16, Beng. Act VIII of 1865, the incumbrances created by the former holder were voidable by the auction-purchaser, and that the plaintiff should show that the former holder could create such right. **ISWAR CHANDRA CHUCKERBUTTY v. BISTU CHANDRA CHUCKERBUTTY,**

[iii Ap. 79]

See SRINATH CHUCKERBUTTY v. SRIMANTO LASHKAR — — — — — viii 240 note

4. — *Sale for arrears of rent—Purchaser of rights of holder of fractional share.]* S. 16 of Beng. Act VIII of 1865 does not apply to the purchaser of the rights and interests of the holder of a fractional share in an under-tenure. **HARASUNDARI DAS v. KISTO MANI CHOWDHRAIN** — — — — — v Ap. 37

5. — *Incumbrance—Brick-built house.]* A brick-built house is not an 'incumbrance,' or a tenure within the meaning of that word in s. 16 of Beng. Act VIII of 1865 which a purchaser at a sale for arrears of rent can remove. **SHIBDAS BANDAPADHYA v. BAMANDAS MUKHOPADHYA** — — — — — viii 237

6. — *Sale for arrears of rent—Rights of a purchaser at an auction-sale held under Beng. Act VIII of 1865 when in collusion with the former proprietor.]* A proprietor of a talook, which was about to be sold for arrears of rent, entered into an arrangement with the plaintiff, whereby, in consideration of a share in the purchase, he agreed to use his influence to urge on the sale, and to secure the purchase to the plaintiff. Under this arrangement the plaintiff became the purchaser of the talook, and the former proprietor obtained a share in the purchase. A suit by the plaintiff to oust the under-tenants was dismissed; the plaintiff took only as a purchaser at an ordinary execution-sale, and did not obtain the benefit of s. 16 of Beng. Act VIII of 1865. **SRINATH GHOSH v. HARONATH DUTT CHOWDHREY** — ix 230

BENG. ACT IV OF 1866, s. 26.

See POLICE MAGISTRATE.

BENG. ACT VI OF 1868, Sch. K.

See ACT XVIII OF 1850.

BENG. ACT VII OF 1868.

See SALE FOR ARREARS OF REVENUE.

BENG. ACT VIII OF 1869.

See ENHANCEMENT OF RENT.

RENT, SUIT FOR.

RES JUDICATA.

—, s. 6.

See RIGHT OF OCCUPANCY.

—, s. 20—*Landlord and tenant—Onus probandi—Notice of relinquishment.]* S. 20, Beng. Act VIII of 1869, does not apply when the ryot holds under a lease for a limited period which has expired. In such a case no written notice of relinquishment is necessary. **TILAK PATAK v. MAHABIR PANDAY** — — — — — vii Ap. 11

BENG. ACT VIII OF 1869, s. 21.*See* INTEREST.

—, s. 29.

See LIMITATION ACT XLV OF 1859, s. 1
CL. 8.

2. — *Limitation — Suit for arrears of rent—Act XIV of 1859, s. 1, cl. 16—Pro forma defendants.*] The plaintiffs sued the defendants, who were ijaradars of the property in which they were co-sharers, for arrears of rent extending over a period of six years. The suit was first brought in the Revenue Court, and as their co-sharers had not joined in the suit, the plaintiffs made them defendants, and their being defendants preventing the plaintiffs from continuing the suit in the Revenue Court, they instituted it afresh in the Civil Court after Beng. Act VIII of 1869 came into operation. The defendants objected that, under the limitation provided by s. 29 of that Act, no more than three years' rent could be recovered; but the Judge held, affirming the decision of the Munsif that the case was governed by cl. 16, s. 1, Act VIII of 1859, and that six years' rent could be decreed. *Held* on special appeal to the High Court, that the fact of the co-sharers being made *pro forma* defendants did not alter the real character of the suit, which was to recover arrears of rent, and that, therefore, the provisions of s. 29, Act VIII of 1869, were applicable, and a decree for three years' rent only was given. *GUNGA GOBIND SEN v. GOBIND CHUNDER DASS* - - - xi Ap. 31

3. — *Act X of 1859, s. 32—Suit for arrears of rent.*] The words of s. 29, Beng. Act VIII of 1859, are intended to apply specially, and exclusively of Act XIV of 1859, to the same class of cases as those to which s. 32, Act X of 1859 applied, though that class cannot now be defined, as it formerly could, by reference to the jurisdiction of the Court in which the cases fall to be entertained. The class is limited to suits for arrears of rent simply, as "arrears of rent" are defined in s. 21, Beng. Act VIII of 1869. *GOBIND COOMAR CHOWDREY v. MANSON* - - - - - xv 56

—, s. 34—*Suits for rent—Act VIII of 1859, s. 119.*] S. 119 of the Civil Procedure Code (Act VIII of 1859) is made applicable to rent suits under Beng. Act VIII of 1869 by the provisions of S. 34 of the latter Act. *DEBAMAYI GUPTIA v. TARACHARAN SEN*, [vii 207

—, ss. 37 and 38—*Right of co-sharers of joint undivided estate to measurement of land.*] A shareholder in a joint undivided estate cannot bring a suit under s. 37 of Beng. Act VIII of 1869 for the measurement of his share. *SANTIRAM PANJA v. BYCUNT PANJA* - x 397

2. — Nor under Beng. Act VI of 1862, s. 10, and Beng. Act VIII of 1869, s. 38. *MOOLOK CHAND MUNDUL v. MODHOOSOODUN BACHASPUTTY* - - - - - x 398 notes

MAHOMED BAHADUR MOZOOMDAR v. RAJAH RAJ KISHEN SINGH - - - - - x 401 notes

SHORENDRO MOHUN ROY v. BHUGGOBUTTY CHURN GUNGOPADHYA - - - - - x 403 notes

BENG. ACT VIII OF 1869, s. 52—Act X of 1859, s. 78—Stay of execution of decree.] The Court has discretion to stay execution on other ground than those on which it is bound to do so under s. 52 of Beng. Act VIII of 1869. *RAO BANERAM v. RAMNATH SHAH* - - - - - x Ap. 3

—, s. 102.

See SPECIAL APPEAL.
SUPERINTENDENCE OF HIGH COURT.

2. — *District Judge—Subordinate Judge—Act XVI of 1868—Bengal Civil Courts Act (VI of 1871).*] The words "District Judge" in s. 102 of Beng. Act VIII of 1869 do not include a Subordinate Judge, to whom, under Act XVI of 1868, or Act VI of 1871, the District Judge may make over appeals filed in his Court. *DOYAL CHAND SAHOY v. NABIN CHANDRA ADHIKARI* - - - - - viii 180

3. — *Additional Judge—District Judge—Bengal Civil Courts Act (VI of 1871)—Appeal.*] *Held* (JACKSON, J., dissenting), that an Additional Judge, invested with the powers given to him by Act VI of 1871, is a District Judge within the meaning of s. 102 of Beng. Act VIII of 1869, and no appeal lies from his decision in suits of the nature described in that section. *PROJO MISSEER v. AHLADI MISSEER*, [xiii F. B. 376

ISHAN CHUNDER GHOSE v. NOBIN PAL, [xiii 377 notes

4. — *Co-sharer—Suit for rent.*] The plaintiff, one of several co-sharers of a talook, sued to recover her share of rent, making her co-sharers, who resisted her claim, defendants. The first Court raised and tried questions of title between the plaintiff, her co-sharers, and the ryot, and decided in favour of the plaintiff. The lower Appellate Court, without expressing any opinion on the rights of the parties, dismissed the suit on the ground that it was not maintainable. On special appeal it was contended that no appeal would lie, as the amount of the claim was less than Rs. 100, and no question of title was determined by the judgment; but this objection was overruled, on the ground that the decree of the lower Appellate Court, dismissing the suit, had the effect of deciding the questions of title against the plaintiff. On appeal under s. 15 of the Letters Patent *held*, that the judgment, rather than the decree, is to be looked at in applying s. 102, Beng. Act VIII of 1869. No appeal lay from the judgment of the lower Appellate Court, inasmuch as that judgment showed, not only that no question of title was determined, but that the Judge did not even consider it. *KARIM SHEIKH v. MUKHODA SOONDERY DASSEE*, [xv 111

—, s. 103—*Act VIII of 1859, s. 119—Ex parte decree—Rehearing.*] S. 103 of Beng. Act VIII of 1869 does not apply to applications for a rehearing after an *ex parte* decree, on the ground of ignorance of the suit. *DEBAMAYI GUPTIA v. TARACHARAN SEN* - vii 207

BENG. ACT VIII OF 1869, s. 108.*See* BENG. ACT III OF 1870.

BENG. ACT III OF 1870, s. 3—Decree transferred to Civil Court for execution—Appeal—Beng. Act VIII of 1869, s. 108—Act X of 1859, ss. 153, 155.] In a suit brought for recovery of Rs. 75 for arrears of rent, the plaintiff obtained an *ex parte* decree on 18th March, 1869, in the Court of the Deputy Collector. In October, 1871, he applied to the Munsif for and sued out execution of his decree. In January, 1872, one of the defendants applied to the Deputy Collector for a review of his judgment, and the Deputy Collector admitted the review and dismissed the plaintiff's suit. On appeal the Judge held that the Deputy Collector had no jurisdiction to entertain the application for review or to hear the case, the decree having been transferred under Beng. Act III of 1870 to the Munsif for execution, and reversed the judgment of the Deputy Collector. *Held*, that the suit having been decided by the Deputy Collector before Beng. Act VIII of 1869 came into operation, the procedure, therefore, would be that laid down by s. 108 of the Act, *i.e.*, under Act X of 1859, and the appeal would lie to the Collector, not to the Judge, under ss. 153 and 155 of that Act. The decree alone was transferred to the Civil Court, and the application for review was rightly made to the Court of the Deputy Collector. **IN THE MATTER OF RAMSOONDER BANDOPADHYA** - - - x Ap. 21

IN RE JUGGODUMBA DOSSEE x Ap. 23 note

2. — Transfer of decrees—Application to set aside decree—Jurisdiction.] When an *ex parte* decree of a Revenue Court has been transferred to the Civil Court under the provisions of s. 3 of Beng. Act III of 1870, an application to set aside the decree must be made to the Civil Court, and not to the Revenue Court. **KRISHNA KISHORE PODDAR v. WOOMESH CHUNDER ROY** - - xiii F. B. 214

IN RE WOOMA CHURN ROY MOZOOMDAR,
[xiii 215 note]**OODWUNT MAHTOON v. BIDDHI' CHAND CHOWDREY** - - - xiii 216 note**MOHESH CHUNDER SINGH SURMA v. BHOOBUN MOYEE DEBIA** - - - xiii 217 note**BENG. ACT IV OF 1870.***See* LUNATIC.

—, s. 75 — Sale for arrears of rent — Power of Collector—Tenure created under Court of Wards—Previously existing tenure.] The provisions of s. 75 of Beng. Act IV of 1870 apply only to tenures created by the Collector during the time the estate has been in the hands of the Court of Wards, and not to tenures created previously. A Collector, therefore, has no power to sell for arrears of rent a tenure created before he took charge of the estate without previously obtaining a decree for such arrears in the regular way. **COLLECTOR OF CHITTAGONG v. KALA BIBI** - - xv 343

BENG. CIVIL COURTS ACT (VI OF 1871), s. 22—Appeal—Subject-matter in dispute—Jurisdiction of the High Court.] The appeal from the decree or order of a Subordinate Judge or Munsif, where the amount or value of the subject-matter in dispute in a suit exceeds Rs. 5,000, lies to the High Court, although the amount or value of the subject-matter in dispute in appeal is less than Rs. 5,000. **IN THE MATTER OF THE APPEAL OF DULI CHUND,**
[ix 190]

But see SRIMATI DASI v. SOUDAMINI DOSSEE,
[ix 192 note]

2. — Interest on account of appeal.] Where an appeal was brought from an order in execution of the decree in a suit in which both the amount sued for and the amount of the decree were below Rs. 5,000, but by reason of interest the appeal was valued at more than that sum, the case was held to come within the principle of *In re Duli Chand. RAI DHANPAT SINGH BAHADOOR v. MADHUMATI DEBI* - - - ix 197 note

3. — Appeal—Subject-matter in dispute—Jurisdiction of High Court — Execution of decree — Act XXIII of 1861, s. 11.] The appeal from an order of a Subordinate Judge directing execution to issue, lies to the District Judge, and not to the High Court, where the amount claimed in a suit is under Rs. 5,000, although the amount sought to be recovered in execution has, by the addition of interest since decree, grown to a sum exceeding Rs. 5,000. **RUTTANJOTE KOOR v. RAM DASS,**
[x 290]

4. — Appeal—Execution of decree.] When the High Court called up an appeal to the Zilla Judge, and tried it as a regular appeal, and passed a decree thereon, *held*, that this did not entitle the parties to prefer an appeal to the High Court in the proceedings in execution of that decree. Such appeal would lie to the Zilla Judge. **RAMANOOGRA SAHOY v. BYJ-NATH LAL** - - - x 291 note

BENG. ACT III OF 1873.*See* MANDAMUS.**REQUEST TO IDOL.***See* HINDU LAW, ENDOWMENT.
HINDU LAW, WILL.**BILL OF COSTS.***See* ATTORNEY AND CLIENT.
TAXATION OF BILL OF COSTS.**BILL OF EXCHANGE.***See* HINDU LAW, CONTRACT.
MAHOMEDAN LAW, BILL OF EXCHANGE.

2. — Notice of dishonor.] In an action brought in the district of Patna against the indorser and acceptors of bills of exchange, after a part-payment by the acceptors, no objection having been taken as to the misjoinder of defendants, and the Judge having omitted to find whether the indorser had received notice of dishonor or not, *held*, the case must be remanded to ascertain, first, whether notice had been given within reasonable time, and if not,

BILL OF EXCHANGE—continued.

whether thereby the indorser had been injured or exposed to material risk of injury; and, secondly, whether (English law not being applicable to the case) by the usage of merchants at Patna, a part-payment by the acceptors and receipt by the plaintiff discharged the indorser from liability. *GOPAL DAS v. SHEIKH SYED ALI* - - - - - iii A. C. 198

3. — *Dishonor of cheque taken in payment of Bill of Exchange when due—Notice of dishonor.* The defendant endorsed to the plaintiff a bill of exchange drawn by *N. S. & Co.*, and accepted by *C. N. & Co.* The bill, at the time it was endorsed to the plaintiff by the defendant, bore the previous endorsement of *N. S. & Co.* to the defendant. The bill fell due on December 3rd, 1870, which was a Saturday, and on that day the plaintiff sent his jemadar to *C. N. & Co.*, the acceptors, to present the bill for payment. The bill was taken by *A.*, one of the members of the firm of *C. N. & Co.*, who gave a cheque for the amount, and took a receipt from the plaintiff's jemadar, striking out the signature of *C. N. & Co.* as acceptors, but without the plaintiff's consent. The plaintiff's jemadar took the cheque immediately to the Bank, and the Bank was closed. Thereupon he returned to *C. N. & Co.*, and informed them that the Bank was closed, and demanded cash. The plaintiff alleged that it was then stated that the cheque would be honored on Monday. The plaintiff's jemadar then went and informed the gomasta of the plaintiff of what had been done. The plaintiff's gomasta sent him to the defendant's firm to give him notice of what had taken place. It was alleged that at this interview the defendant's liability was admitted in case the cheque was not honored, and the plaintiff's jemadar was advised to wait until Monday, the defendant stating that he also had a cheque for Rs. 7,000 from *C. N. & Co.* This was denied by the defendant. On Monday, 5th December, the cheque was presented to the Bank for payment, and was dishonored. The plaintiff's gomasta went to the defendant's kotli, and gave notice of the dishonor of the bill and cheque, and asked him to pay the amount of the bill. The defendant asked for the bill, and the plaintiff's gomasta went to *C. N. & Co.*, and brought back the bill, with the name of *C. N. & Co.*, which had been struck out, replaced. The defendant seeing the bill was overdue, refused to pay the amount. The cheque was thereupon returned to *C. N. & Co.*, and the bill retained by the plaintiff, who, on 6th December, caused written notice of dishonor to be given to the defendant. *Held*, that the cheque must be taken to have been merely a conditional payment; and when it was dishonored the liability on the original bill revived. *Held* also, that reasonable notice of dishonor was given, whether the bill be taken to have been dishonored on the Saturday or on the Monday. *SOMARIMULL v. BHAIRAO DAS JOHURRY*,

[vii 431

GAPINATH v. ABBAS HOSSEIN - vii 434 note

BILL OF LADING.

See CHARTER PARTY.

2. — *Construction—Liability of Master—Negligence—Onus probandi—Estoppel.* The defendant, master of the steamer *Scindia*, signed a bill of lading, by which he agreed with *C. & Co.* of London to deliver at Calcutta to them or their order four casks of brass wire, which were shipped on board the *Scindia*. The casks were described in the bill of lading as bearing a certain mark, beneath which was the word 'Calcutta' as being the port of destination, and they were stated as being carried subject to the following exceptions:— "The ship is not liable for obliteration or absence of marks, numbers, address or description of goods shipped: and expenses and losses by detention of ship or cargo, caused by incorrect marking, or by incomplete or incorrect description of contents, shall be borne by the owners of the goods. In case any part of the within goods cannot be found during the ship's stay at the port of destination, they are, when found, to be sent back by first steamer at the ship's risk and expense, and subject to any proved claim for loss of market. The ship shall not be liable for incorrect delivery, unless each package shall have been distinctly marked by the shippers before shipment with the port of destination." The bill of lading was endorsed by *C. & Co.* to the plaintiff, a trader in Calcutta, who, on the arrival of the *Scindia* at that port, applied for delivery of the four casks; and it then appeared that they had been landed at Colombo. In a suit to recover the price of the goods, *held*, the defendant was estopped from alleging that the casks were not marked as stated in the bill of lading. It was open, however, to the defendant to prove that the casks did not on their arrival at Colombo bear the word 'Calcutta,' and thus to bring himself within the clause in the bill of lading, exempting the ship from liability for obliteration or absence of marks; but on proof of this, in order to disentitle the plaintiff to succeed, the defendant must show that the absence or obliteration caused the landing at Colombo. It was found on the evidence that he had failed to do this, and a decree was given for the plaintiff. *MADHUB CHUNDER DEY v. LAW* - - - xiii 394

BILL OF SALE.

See CONTRACT.

EVIDENCE, PAROL EVIDENCE.
VENDOR AND PURCHASER.

BILLS OF EXCHANGE ACT (V OF 1866)—*Summary procedure—Extension of time for appearance—Jurisdiction.* Where, in a suit under Act V of 1866, the defendant is at such a distance as would make it impossible for him to put in an appearance within the seven days allowed by the Act, the Court will stay execution for a time long enough to allow him to appear. Suits cannot be brought under this Act against persons resident out of the jurisdiction. *CHANDRAKANT ROY v. POGOSE*,

[iii O. C. 83

2. — *Promissory note—Consideration—Evidence.* In a suit under the Bills of Exchange

BILLS OF EXCHANGE ACT (V OF 1866)—contd.

Act, to recover 1,200 rupees on a promissory note, the Court gave a decree for 700 rupees only, that being shown to have been the full consideration received for the note. **RAMLAL MOOKERJEE v. HARAN CHANDRA DHAR**,
[iii O. C. 130]

3. — *Leave to appear and defend—Practice—Costs.* The Court will give leave to a defendant to appear and defend in suits under Act V of 1866, where he shows a defence apparently real; but where there is a doubt as to the *bona fides* of the defence, payment of money into Court will be ordered, or security directed to be given. The Court has, in giving leave to defend, a discretion to order security for costs, not only where it doubts the *bona fides* of the defence, but also if it considers the matter of defence raised is unnecessary, though allowable. If the plaintiff has not been heard at first against the defendant's application, the Court will always allow him to come in afterwards and show that the leave ought not to have been granted, or, if granted at all, in more stringent terms. **VONLINTZGY v. NARAYAN SINGH** — — — vi Ap. 64

4. — *Leave to defend.* In an action on a promissory note under this Act the defendant was allowed to come in and defend after the plaintiff had obtained a decree; the decree was set aside and written statements ordered. **JOSEPH v. SOLANO** — — — ix 441

5. — *Suit under Rs. 500—Jurisdiction of Small Cause Court—Costs.* In an undefended suit brought under Act V of 1866 on a promissory note for Rs. 342, there was nothing in the petition to show that the suit could not have been brought in the Small Cause Court, the High Court gave a decree for amount of note and costs. **DUFF v. FISHER** — — — viii Ap. 10

6. — *Promissory note—Endorsement struck out—Evidence.* A plaint was presented under Act V of 1866 by the endorsees of a promissory note endorsed as follows:—"Received from the Chartered Mercantile Bank.—J. M. Reid, Agent." The note had not been paid when presented, and the endorsement was struck out. Admission of the plaint was refused, unless evidence was given that the note had been paid, and to explain why the endorsement was struck out. As under Act V of 1866 evidence could not be received, the plaint was not admitted. **CHARTERED MERCANTILE BANK v. SECONDE** — — — iii O. C. 146

BILLS OF EXCHANGE, POWER TO ISSUE.

See COMPANY.

BILLS OF EXCHANGE, PRESUMPTION OF PAYMENT.

See SHIPMENTS.

BLINDNESS.

See HINDU LAW, INHERITANCE, EXCLUSION FROM.

BOARD OF REVENUE, POWERS OF.

See SETTLEMENT.

BOARD OF REVENUE, SANCTION OF.

See PARTITION.

BONA FIDE HOLDER FOR VALUE.

See TROVER.

BONA FIDE PURCHASER.

See LIMITATION ACT XIV OF 1859, s. 5.

BOND.

See CIVIL PROCEDURE CODE, s. 206.

INTEREST.

LIMITATION ACT XIV OF 1859, s. 20.

MORTGAGE.

REGISTRATION ACT XX OF 1866, s. 53.

STAMP

2. — *Power of Court to alter terms of specially registered bond—Act VIII of 1859, s. 194—Order to pay by instalments—Superintendence of High Court.* By a bond specially registered under Act XVI of 1864, the obligor stipulated to pay the entire amount secured thereby with interest at the rate therein mentioned on a day therein mentioned. There was a further stipulation that, on default of payment, the bond was to be enforced as a decree. On failure of payment, the obligee applied for execution under s. 53, Act XX of 1866, but the Subordinate Judge ordered the payment to be made by instalments. On an application to the High Court under s. 15 of the Charter Act, *held*, that the Subordinate Judge had no jurisdiction to pass a decree on the bond altering or varying its terms. *S. 194, Act VIII of 1859, did not apply.* **KHETTRA MOHUN BABOO v. RASHBEHARI BABOO** v 167

3. — *Instalment bond—Execution of decree—Failure to keep decree alive—Suit on bond.* In execution of a decree, seven out of nine judgment-debtors, with the consent of the decree-holder, filed an instalment-bond, agreeing to pay the amount of the decree with interest thereon in two instalments. The decree-holder neglected to take proceedings to keep alive the decree, and his application to execute the decree was disallowed. In a suit brought by the decree-holder against the persons who had executed the instalment-bond for the amount of principal and interest due thereon.—*held*, that the suit was maintainable. **ASHIAHHARI CHOWDHRY v. JAGESHUR KUMAR** — — — vi Ap. 33

4. — *Bond debt—Payment—Mode of calculating interest—Reg. XV of 1793.* Where payment was made upon a bond, the amount paid being less than the interest due, *held*, the payment ought to go to reduce the amount of interest due, and the creditor in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree. **LUCHMESWAR SING v. LUTF ALI KHAN** — — — viii P. C. 110

5. — *Evidence—Non-registration.* In an action on a bond and mortgage, which was not registered, and the *factum* of which was denied, the Principal Sudder Ameen decided in favour of the plaintiffs; but such judgment being reversed by the High Court, the Judicial Committee considering that too much weight had been given to the fact of non-registration,

BOND—continued.

reversed that finding, and, after a careful analysis of the evidence, found the bond to be genuine. **GANGAPRASAD v. MAWJI LAL**, [ix P. C. 426]

6. — *Limitation—Act XIV of 1859, s. 1—Cause of action.*] Where a bond, payable by instalments, provided that, upon default in payment of any one of the instalments, the whole amount secured by the bond should become payable,—*held*, that a suit to recover the money due upon the bond, brought after a lapse of more than three years from the date when the first default was made, though within three years from the date of the last payment, was barred by lapse of time. **HURBONATH BOY v. MAHEROOLLAH MOLLAH**, [Sup. Vol. 618]

7. — *Cause of action—Decree payable by monthly instalments.*] When a bond is entered into to pay off money due under a decree by monthly instalments, each monthly instalment becomes a separate cause of action, and limitation applies to each instalment separately. **KHIDU v. KALI SAHU** — - iii Ap. 112

8. — *Novation of bond—Surety—Liability of.*] B. became surety under a bond to Government for the treasurer of a Collectorate. The Collector yearly examined the accounts, and struck a balance, which he certified to be correct. B. on each such occasion executed a new bond, but the old bonds were not cancelled or given up. On subsequent enquiry, the treasurer was discovered to have embezzled moneys during each year. *Held* that, on such discoveries being made, B. was still liable under the old bonds, there having been no novation. **LALA BANSHIDHAR v. GOVT. OF BENGAL** — - - ix P. C. 364

9. — *Novation—Fraud—Undue influence and threats.*] The three childless widows of a zemindar instituted a suit against the rightful heir to their husband's estate, in which they unsuccessfully disputed his legitimacy. Previously thereto they had obtained advances of money from the present plaintiff, and executed in his favour an agreement and a bond, whereby they secured to him the payment of large sums in case they recovered their husband's estate, and virtually gave to him the entire control of their suit. Subsequently they agreed with the rightful heir to compromise the suit, which compromise, however, was never acted upon, partly owing, it was alleged, to the subsequent conduct of the heir. At the date of the compromise, the heir, who had just attained his majority, and was without proper counsel or assistance, and acted under threats from the plaintiff, a powerful and wealthy banker, that he would carry on the litigation against him *per fas aut nefas*, was induced, contrary to his own judgment and sense of right, and without any evidence that the sum claimed was really due to the plaintiff, to execute a bond in his favor, whereby he bound himself to pay a large sum of money claimed by the plaintiff as being due from the widows; the plaintiff on his part

BOND—continued.

agreeing that he would treat such payment as a satisfaction of his claim against the widows, but, meanwhile, that he would retain the securities which he held from them. In a suit brought by the plaintiff against the heir to enforce the last mentioned bond, *held*, that the bond was wholly invalid and fraudulent as against the defendant, and that as there was no privity of contract between the plaintiff and defendant independently of the bond, it could not stand as a security for anything which might be justly due from the widows. *Seemle.*—The transaction, even if valid, did not amount to a novation; for the plaintiff never abandoned his claim against the widows, but only agreed to abandon his remedy against them, in case he obtained satisfaction of his claim from the heir. **CHEDAMBARA CHETTY v. RENJA KRISHNA MUTHU PUCHANJA NAIKAR**, [xiii P. C. 509]

BOND, RECITALS IN.

See ONUS PROBANDI.

BOND, SUIT ON JOINT.

See RES JUDICATA.

BOTTOMRY-BOND HOLDER — Sale of Ship — Master's lien for wages—Charterer—Priority.

The charterer of a ship advanced money to enable her to complete the voyage, and obtained as security a "bottomry-bond" signed by both the master and owner. On the completion of the voyage, the charterer got the ship arrested and sold, and the money was brought into Court. Before any order had been made for the payment of the proceeds out of Court, the master also had got the ship arrested at his suit for wages due, but no decree had been obtained. Subsequently, the charterer, without notice to the master, obtained an order of Court for the payment of the proceeds of sale to satisfy his bottomry-bond. Thereupon, the master applied to restrain the charterer from taking the money out of Court until the claim for wages had been first satisfied. *Held*, that the master had a lien on the proceeds for wages due to him at the time of the sale of the ship, prior to that of the bottomry-bond holder, and that he was entitled to have the proceeds retained in Court until the hearing of his claim. **IN THE MATTER OF THE SHIP "PORTUGAL"** — - - v 258

2. — Master's lien for disbursements and wages—Tonnage—Priority of lien.

A ship was chartered for a voyage from Calcutta to Jeddah and back. While at Jeddah, the master found it necessary to borrow money for the wages of the crew and other purposes; and with the consent of the owner, tenders were invited by advertisement for a sum for which a bottomry-bond was to be given. Several tenders were made, and one by the charterer of the ship was accepted. A bottomry-bond was executed by the master, with the consent of the owner, in which was included the expense of certain repairs which had been found necessary at an intermediate port on the voyage from Calcutta, and for which the master had made himself

BOTTOMRY-BOND HOLDER—continued.

liable. By the bond the master bound himself, his heirs, executors, and administrators for the payment of the sum named therein, and part of the consideration was expressed to be the payment of the debt which the master had incurred at the intermediate port. On arriving in the Hooghly, the ship was taken in charge by a pilot, under whose advice the master engaged a steamer to tow her to Calcutta. He was sued in Calcutta for the hire of the steamer, and had to pay the claim. When the ship arrived in Calcutta, the bond-holder obtained a decree on his bond, and had the ship arrested and sold; but on the application of the master, who had put in a claim for wages, the Court ordered that the proceeds should remain in Court pending the consideration of the master's claim. In a suit by the master to recover the balance of wages due to him as master of the ship, and for the expense of the steamer which towed the ship up the river to Calcutta, *held*, the towage was a disbursement fairly made, and of which the bond-holder had the benefit; the master, therefore, had a lien on the ship for such disbursement. *Semble*.—The master also had a lien for wages down to the time when he was duly discharged, and not merely down to the time of the arrival in port and arrest of the ship. The master, however, having bound himself by the terms of the bond, was precluded thereby from setting up his lien against that of bond-holder, to whom, on the face of the bond, he had constituted himself a debtor. **IN THE MATTER OF THE SHIP "PORTUGAL"** — — vi 323

BOUGHT AND SOLD NOTES, VARIANCE BETWEEN.

See EVIDENCE, PAROL EVIDENCE.

BOUNDARY.

See SUNDERBUN'S BOUNDARY.

BOUNDARY, FLUCTUATING.

See ACCRETION.

BREACH OF CONDITION.

See WILL.

BREACH OF CONTRACT.

See ACT XIII OF 1859.

CAUSE OF ACTION.

CONTRACT.

LIMITATION ACT XIV OF 1859,
s. 1, CL. 9.

BREACH OF PEACE, DISPUTE LIKELY TO CAUSE.

See CRIMINAL PROCEDURE CODE (X OF 1872), s. 530.

POSSESSION, ORDER OF CRIMINAL COURT AS TO.

RECOGNIZANCE TO KEEP THE PEACE.

BREACH OF TRUST, CRIMINAL.

See PARTNERSHIP PROPERTY.

PENAL CODE, ss. 405—408.

BREACH OF WARRANTY.

See CHARTER-PARTY.

BUILDINGS, ERECTION OF.

See ACQUIESCENCE.

LANDLORD AND TENANT.

BUILDINGS, RIGHT OF TENANT TO REMOVE.

See LANDLORD AND TENANT.

CAMP-FOLLOWERS.

See SMALL CAUSE COURT, MOFUSSIL.

CARRIERS.

See CONTRACT.

RAILWAY COMPANY.

CARRYING ARMS WITHOUT LICENSE.

See ACT XXXI OF 1860.

CARRYING ON BUSINESS.

See CAUSE OF ACTION.

CATTLE TRESPASS.

See NUISANCE.

PENAL CODE, s. 425.

CATTLE TRESPASS ACT, s. 19.

See PENAL CODE, ss. 405, 406.

CAUSE LIST, SETTING DOWN CASES IN.

See PRACTICE.

CAUSE OF ACTION.

See ACT XXIII OF 1861, s. 11.

BOND.

DECLARATORY DECREE, SUIT FOR.

HINDU LAW, ALIENATION.

HUNDI.

INJUNCTION.

LIMITATION REG. VII OF 1799.

LIMITATION ACT XIV OF 1859,

s. 1, CL. 9; s. 1, CL. 12; s. 1,

CL. 15; s. 1, CL. 16; s. 11.

REGISTRATION ACT XX OF 1866,

s. 84.

RES JUDICATA.

TRESPASS.

TRUSTEE AND CESTUI QUE TRUST.

2. — *Objection to there being no cause of action.*] An objection as to the plaintiff having no cause of action may be taken at any stage of the suit. *PARBATI CHURN MUKHOPADHYA v. KALINATH MUKHOPADHYA*, vi Ap. 73

3. — *Jurisdiction* — Act VIII of 1859, s. 5.] *B.* entered into a verbal agreement with *A.* at Serampore, where *A.* resided, to start in Calcutta a certain banian-ship business in conjunction with *A.*'s son; *A.* agreeing to advance the required funds on the condition that the sum advanced should be repaid him within a certain date with interest. No place was fixed for repayment. The money was advanced partly at Serampore, and partly in Calcutta. *B.* afterwards went to reside at Chandernagore. In a suit by *A.* for recovery of the balance of the sum advanced, brought in the Hooghly Court, the Judge held that he had no jurisdiction, inasmuch as the cause of action arose in Calcutta: *Held* on appeal, that, under s. 5, Act VIII of 1859, the Hooghly Court had jurisdiction to try the suit. *PER MARKBY, J.*—An action may be brought either in the *forum* of the place where the contract was made, or in that where the performance was to have taken place. *Quære*.—Whether

CAUSE OF ACTION—continued.

this rule would apply if both parties were at the time the contract was made in a district where neither of them had any dwelling or place of business? *Per BIRCH, J.*—When no place for the performance of a contract is prescribed by the agreement, or exacted by the necessities of the case, the place where it is intended by the parties such contract should be fulfilled ought to supply the *forum*. **GOPIKRISHNA GOSSAMI v. NILKOMUL BANERJEE** - - - - - xiii 461

4. — *Promissory note.*] In an action on a promissory note, when the note was made payable to A., who resided in Calcutta, and was executed and delivered to him in Calcutta,—*held*, the whole cause of action arose in Calcutta. **RAMGOPAL LAW v. BLAQUIERE**, [i O. C. 35]

5. — *Jurisdiction of High Court—Promissory note—Letters Patent, 1855, cl. 12.*] The High Court has no jurisdiction to entertain a suit brought upon a promissory note made without, but payable within, the local limits of its jurisdiction, leave to institute the suit not having been first obtained. **MOTHOORMOHUN ROY v. JADOMONEY DOSSEE**, [x 122]

6. — *Letters Patent, cl. 12—Hundi.*] A., who resided and carried on business in the Upper Provinces, sent cotton for sale to B. in Calcutta, and drew hundis against it upon B. payable in Calcutta. The hundis were negotiated, and afterwards presented to B.'s gomasta in Calcutta, and there accepted and paid by him for B. In a suit by B. against A. for balance of account, *held*, that the whole cause of action arose in Calcutta within the meaning of cl. 12 of the Letters Patent. **DHUNRAJ v. GOVINDARAM** - - - i O. C. 76

7. — *Letters Patent, 1865, cl. 12—Jurisdiction—Action for malicious prosecution.*] Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate of Moradabad, causing a warrant to be issued by the Magistrate, and having him arrested under that warrant in Calcutta,—*held*, the whole cause of action did not arise at Moradabad; that part of the cause of action arose in Calcutta, so as to entitle the plaintiff, with leave of the Court, to bring an action in the High Court. **LUDDY v. JOHNSON** - - - - - vi 141

8. — *Jurisdiction—Carrying on business—Letters Patent, 1865, cl. 12—Suit on hundi.*] The defendant, who resided and carried on business at Patna, was in the habit, several times in the course of the year, of sending goods to Calcutta by boat, and coming down himself by rail; he received his goods, and remained in Calcutta until he sold them. He had no place of business, nor any gomasta or agent of his own in Calcutta, but used to sell the goods himself, and put up sometimes at one *ârut*, sometimes at another. His stay in Calcutta varied from two to four months. He used to

CAUSE OF ACTION—continued.

pay commission on the goods sold to the *ârut* where he put up, and he was in the habit of drawing hundis at Patna on himself at Calcutta, accepting and paying them in Calcutta. The plaintiff brought a suit on a hundi so drawn, and purporting to be so accepted by the defendant, of which payment was refused by the defendant. The defendant admitted the drawing of the note, but alleged that the acceptance was forged. The Judge found that the note had not been accepted by the defendant. The summons was served on the defendant in Calcutta. Leave to institute the suit had not been obtained under cl. 12 of the Letters Patent. *Held*, the whole cause of action did not arise in Calcutta. *Held* also, that the defendant was not, at the commencement of the suit, carrying on business in Calcutta within cl. 12 of the Letters Patent. Leave to institute the suit under cl. 12 not having been obtained, the Court had no jurisdiction to entertain the suit. **HARJIBAN DAS v. BHAGWAN DAS** - - - - - vii 102

— *Held* on appeal, reversing the decision of the Court below, that the defendant was "carrying on business" in Calcutta within cl. 12 of the Letters Patent. **HARJIBAN DAS v. BHAGWAN DAS** - - - - - vii 535

9. — *Jurisdiction—Venus—Act X of 1859, s. 74—Suit for balance of account by zemindar against manager of two estates.*] The defendant was appointed a superintendent of two estates, one called Chulman, within the Sub-division of Diamond Harbour, and the other Alipore, within the Sub-division of Alipore. By his *kabuliat* he agreed to make good any retrenchments his employer, the zemindar, might make in his accounts. Some retrenchments were made, and to recover the balance which appeared due, the zemindar brought this suit. *Held*, that as the defendant had agreed by his *kabuliat* to make the principal kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys were remitted, and where all the accounts were prepared, and the money first came under the control of the defendant, and was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay. **PRASANNA CHANDRA BOSE v. PRASANNA CHANDRA RAJ** - - vii Ap. 35

10. — *Jurisdiction—Letters Patent, 1865, cl. 12.*] The plaintiff, resident in Calcutta, sued H., resident in Bombay, but carrying on business by his gomasta in Calcutta, and others resident in Bombay, to set aside a release executed in Calcutta of his interest in certain property situate in Bombay, on the allegation that it had been obtained from him by false representations made by H. The plaintiff prayed that the release might be declared void, and cancelled; that a certain inventory and account relating to the said property, which the plaintiff alleged he had been induced to file in Bombay by the false representations of H.

CAUSE OF ACTION—continued.

might be declared not binding on the plaintiff; for an account; and for the appointment of a receiver. *Held*, that the whole cause of action did not arise in Calcutta so as to enable the plaintiff to sue in Calcutta without leave of the Court under cl. 12 of the Letters Patent. The word 'defendant' in that clause means all the defendants, if there are several defendants to a suit. It is not sufficient that one of the defendants should dwell or carry on business within the jurisdiction. **HADJEE ISMAIL HADJEE HUBBEES v. HADJEE MAHOMED HADJEE JOOSUB; ROHIMA BEE v. HADJEE MAHOMED HADJEE JOOSUB** - - - xiii 91

11. — *Act VIII of 1859, s. 5.*] By a contract entered into at Beerpore, in the district of Nuddea, the plaintiff agreed to supply indigo-seed to the defendant, the seed to be paid for on delivery by an order to be sent to the plaintiff on receipt of the seed. The plaintiff resided at Berhampore, in the district of Moorshedabad, and the defendant carried on business at Beerpore, in the district of Nuddea, where delivery was to be made. The seed was delivered by the plaintiff as agreed, but the defendant refused to pay for it. In an action brought in the Moorshedabad Court to recover the price of the seed, *held*, that the Moorshedabad Court had jurisdiction to entertain the suit. The refusal of payment by the defendant, which was to have been made in the district of Moorshedabad, was a sufficient cause of action under s. 5, Act VIII of 1859, to enable the plaintiff to sue in that Court. *Sembla*.—The words "cause of action" in that section do not mean the whole cause of action. **HILLS v. CLARK** - - - - - xiv 367

12. — *Survival of cause of action—Act VIII of 1859, s. 100.*] A. and B., as joint owners of certain land, brought an action for damages on account of trespass. B. died after action was brought. *Held*, that the cause of action survived to A. *Sembla*.—The words "cause of action" in s. 100 of Act VIII of 1859, mean right to bring an action. **CHUNDERMOHUN DUTT v. BISWAMBHUR LAHA** - - - i O. C. 43

CAUSING HURT.

See PENAL CODE, s. 352.

CEREMONIES, PERFORMANCE OF.

See HINDU LAW, ADOPTION.

CERTIFICATE OF ADMINISTRATION.

See COURT OF WARDS.

POSSESSION, ORDER OF CRIMINAL COURT AS TO.

3. — *Act XXVII of 1860, s. 3—Act XL of 1858, s. 3.*] A., as widow of B., and guardian under a will of his minor son, obtained a certificate under s. 3 of Act XL of 1858. C., another widow of B., subsequently applied for a certificate under s. 3 of Act XXVII of 1860. The Judge summarily rejected C.'s application, on the ground that the grant of a certificate to her would lead to confusion. *Held* on appeal, that the Judge ought to have issued notices and proceeded under s. 3

CERTIFICATE OF ADMINISTRATION—contd.

of Act XXVII of 1860. **IN THE MATTER OF RAISUNNISA BEGUM** - - - ii A. C. 129

3. — *Possession.*] The grant of a certificate of administration under Act XXVII of 1860 does not decide any question of title to possession of land. **DHUNRAJ GIRI GOSWAMI v. SRIPATI GIRI GOSWAMI** - - - ii A. Cr. 27

4. — *Ground for refusal—Enquiry.*] A Hindu woman applied for a certificate of administration under Act XXVII of 1860 to the estate of her brother, who had died seven years before, and whose property had since been in the possession of his so-called heir-at-law. The applicant alleged that, at the time of her brother's death, she was pregnant, and subsequently gave birth to a son, who died in infancy. As representative of that son, who was deceased's legal heir, she asked for the certificate. The lower Court summarily rejected her application on the ground of lapse of time. *Held*, that this was not a sufficient reason for rejecting the application, and that the Judge must proceed to an enquiry under the Act. **DOORGADASI DABI v. JUDUNAUTH MOOKERJEE** - - - - - ii Ap. 26

5. — *Executor and legal representative.*] A person was trustee of 'wauqf' or trust property. He had also some other property (how much was not clear) of his own. He made a will relating only to the trust property, and appointed an executor. *Held*, that the executor mentioned in the will was entitled to a certificate under Act XXVII of 1860 with regard to the trust property; and the legal personal representative of the deceased was entitled to a certificate under the same Act with respect to any other property of which he died possessed. **DAUD-ALI v. NADIE HOSSEIN** - - - - - iii A. C. 46

6. — *Devisees under a will—Suit for rent—Possession.*] A devisee under a will need not take out a certificate, and can sue for rent without having obtained possession. **BANEE MADHUB GHOSE v. THAKOOR DAS MUNDUL**, [Sup. Vol. 588]

7. — *Certificate to collect fractional share of debts.*] Certificates to collect fractional parts of debts due to a deceased cannot be granted to different heirs according to their respective shares in the inheritance, but one certificate to collect debts should be granted to all or such of the heirs as would consent to act in concert. **AMIRUNISSA BARKAT v. AFFIATTUNISSA** - - - iii A. C. 404

8. — *Fractional share of estate.*] The appellant was the son by the first wife of the deceased: the respondent, the second wife of the deceased, applied for a certificate for herself and on behalf of her minor sons: the Judge gave her a certificate for a 12-anna share. *Held* on appeal, that the certificate should be granted jointly to the appellant and respondent. The granting of a certificate does not determine any question of title, or decide what property does or does not belong to the estate of the deceased. It merely

CERTIFICATE OF ADMINISTRATION—contd.

enables the person to whom it is granted to collect the assets of the deceased, and is conclusive of her representative title against all debtors to the deceased. A certificate cannot be granted for the collection of fractions of the debts of the deceased. **WASELUN HAK v. GOWHURUNNISSA BIBI** - - - i S. N. vii

9. — *Rival claimants — Discretion of Judge.*] Where there are rival claimants for a certificate to collect the debts of a deceased person, the Judge has, under s. 3, Act XXVII of 1860, a discretion to present it to such person as, under the circumstances of the case, shall appear best entitled to it. *Quare*.—Has he power, under the Act, to grant them a joint or separate certificate? **RAISUNNISSA BEGUM v. KHUJJUNISSA** - - - iv A. C. 149

10. — *Suit by co-heir against holder of certificate — Misappropriation of property of deceased.*] A co-heir is entitled to follow property of the deceased into the hands of any person who has misappropriated it, and such right is not taken away by the certificate of administration granted under Act XXVII of 1860. **NGA THA YA v. MI KHAN MHAW,** [v 371

11. — *Judge sitting on Original Side, power of.*] **NORMAN, J.**, ruled that, sitting on the original side of the Court, he could not grant a certificate of administration in supersession of one which had been granted by the Judge of the 24-Pergunnahs under Act XXVII of 1860. **IN THE GOODS OF SHAMLAL DAS** - v Ap. 21

12. — *Recall of certificate granted without jurisdiction.*] The High Court on appeal remanded a case for enquiry as to an allegation that a certificate granted under Act XXVII of 1860 had been granted without jurisdiction, and ordered that if found to have been granted without jurisdiction it should be recalled. **IN RE JAGESWAR DAS** - - vi Ap. 128

13. — *Recall of certificate of administration.*] A certificate of administration granted under Act XXVII of 1860 may be recalled, if it has been obtained by a false and fraudulent statement. **IN THE MATTER OF THE PETITION OF BHABADA DAS** - - - viii Ap. 13

14. — *Power of Judge to recall—Inquiry, extension of.*] Whether or not a Judge has power to recall a certificate granted under Act XXVII of 1860, he has power, where there are charges made that a certificate has been obtained by fraud, to institute an inquiry, and, if necessary, to refuse an extension of the certificate, or to refuse to grant a fresh one according to the form of the application. **BHIKUN v. ELAHI KHANUM** - viii Ap. 14 note

CERTIFICATE, RECALL OF, GROUNDS FOR.

See ACT XL of 1858.

CERTIFICATE OF ADMINISTRATION.**CERTIFICATE TAX.**

See ACT IX of 1858.

CERTIFIED PURCHASER.

See CIVIL PROCEDURE CODE, s. 260.

CESSER, PROVISIO FOR.

See WILL.

CHAMPERTY—Maintenance — Void agreement — Alienation by Hindu widow—Waste.

A Hindu widow, as the heiress of her husband, sued his four surviving brothers, who retained the enjoyment of the whole joint estate, for the recovery of her share. While the suit was pending, on the 24th April, 1859, she entered into an agreement with the defendant *G.*, by which, after reciting the nature of her claim, and stating that she was too poor to prosecute it, she assigned to him all she might be entitled to receive from the joint estate in right of her deceased husband, together with all interest and accumulations thereon, and all advantage to be derived from the suit about to be instituted by the defendant *G.*; and she appointed him her attorney to institute and carry on any suit in her name for recovering her right and share in the property; it being agreed that he should retain one moiety of what might be recovered absolutely for his own benefit as remuneration, and out of the other moiety should repay himself such sums as he might from time to time have advanced or paid for her maintenance, with interest at 12 per cent. per annum, and also all such sums and costs as he might from time to time have advanced or been put to in carrying on the suits, with 12 per cent. per annum, and should pay over the residue to the widow herself. Subsequently that suit was withdrawn. In May, 1859, the widow, by *G.*, filed a fresh bill against her husband's surviving brothers for recovery of her husband's share in the estate together with accumulations; and in August, 1861, obtained a decree for a large sum of money out of the joint estate—"the whole to be enjoyed by her as a Hindu widow in the manner prescribed by Hindu law." By a deed dated November 14th, 1860, *G.* assigned his interest under the assignment of April, 1859, to *H. S.*, the defendant. In a suit brought on the 22nd February, 1866, by the reversionary heirs of the husband, in the Court of the Principal Sudder Ameen of Hooghly, against the widow, *G.*, and *H. S.*, the last one of whom alone resided in Calcutta, which suit was on the 23rd of April, 1866, removed into the High Court on the application of *G.* and *H. S.*, it was prayed that the agreement of April, 1859, and all sub-assignments that might have been made be set aside as void, and that the money should be paid into Court and kept there during the life of the widow defendant, for the benefit of the reversionary heirs, and in order to prevent waste. *Held* by **PHEAR, J.**, the suit being one to prevent contemplated waste was not barred by lapse of time. The agreement of 4th April, 1859, was void as being without definite consideration, and being in the nature of a gambling transaction, not valid against heirs under Hindu law; and it was also void being of a champertous nature, and contrary to public policy. The law which forbids and avoids all acts contrary to public policy, and subversive of the general interests of society, is in force in this country. *Inde-*

CHAMPERTY—continued.

pendent of the Charter, there is a power inherent in any Court of Justice which receives its authority from the State to make the interests of private persons subordinate to those of the public, and to take care that where they are in conflict, the latter should prevail. *Held* on appeal, by PEACOCK, C. J., and MACPHERSON, J., that the suit could be maintained for the relief sought, and for the protection of the property; that the deed of the 4th April, 1859, so far as it related to the moiety of the property assigned to the defendant *G.* absolutely, was not binding on the plaintiffs or on the persons who upon the death of the widow might succeed to the property of her deceased husband. Though not void on the ground of champerty, it was an unconscionable bargain, and a speculative, if not a gambling contract, and there was no necessity for such an alienation by the widow. But so far as regards the assignment of the moiety as security for the advances and expenses which *G.* or his assigns might reasonably and properly make or incur for the maintenance of the widow, for carrying on the necessary proceedings to enforce her rights, with twelve per cent. interest on such advances, it was not void, but created a charge upon that moiety, which was binding upon the reversionary heirs of the husband to the extent of such advances and expenses. There was legal necessity for such charge, and it affected the moiety both of principal and accumulations. *Held* by MACPHERSON, J., the agreement of April, 1859, was void by English law as being a mere gambling transaction and contrary to public policy and illegal. *GROSE v. AMIRTAMAYI DASSEE* — iv O. C. 1

2. — *Alienation by Hindu widow.*] *K. D.*, a Hindu widow, having applied to *H. S.* to aid her in leaving the family dwelling-house of her late husband, *G. C. C.*, where she alleged she was improperly treated and placed under restraint by the plaintiff, her husband's sole surviving brother, *H. S.*, at his own cost, enabled her to do so. She then applied to *H. S.* to advance funds for the payment of certain debts incurred by her in consequence of the plaintiff's refusal to pay her any portion of the family estate, to allow her a monthly sum for maintenance, and to manage and conduct for her a suit, which she proposed to institute to establish her right to a portion of the joint estate; and *H. S.* consented to do so upon certain terms, which were embodied in a deed by which *K. D.* assigned to *H. S.* all her right, share, and interest as widow of *G. C. C.* in the joint estate and in the accumulations thereof, and in the separate estate of *G. C. C.*, and all benefit to be derived from the intended suit; on trust, first, to repay all the costs of the suit; secondly, to retain, by way of remuneration for managing the suit, one-half of what might be recovered therein; and thirdly, to hold the residue as security for repayment, with interest at 12 per cent., of the sums advanced by *H. S.*; the surplus, after satisfy-

CHAMPERTY—continued.

ing all such sums, to be paid to *K. D.* Then *K. D.*, with the aid and under the management of *H. S.*, brought a suit against the plaintiff and other members of the joint family of *G. C. C.*, for a declaration of her rights under the will of his father *R. C.*, and for the administration of *G. C. C.*'s share of the joint estate. The result of this suit was, that *K. D.* was (among other things) declared entitled as a Hindu widow to Rs. 1,01,302-14-10 in respect of the accumulations of the joint property, between the dates of *R. C.*'s and *G. C. C.*'s deaths. The plaintiff paid the Rs. 1,01,302-14-10 into Court, under an order made in the suit. *K. D.* subsequently obtained an order, under which she took this sum out of Court, notwithstanding that the plaintiff applied for an injunction to restrain her taking it out. Upon her obtaining that order, the plaintiff, as immediate reversionary heir of *G. C. C.*, instituted the present suit against *K. D.* and *H. S.*, to restrain *K. D.* from taking the Rs. 1,01,302-14-10 out of Court, and to compel her to bring back any portion thereof which she might have already received; and for a declaration that the assignment to *H. S.* created no valid charge thereon. *Held* (following the decision in the case of *Grose v. Amirtamayi Dasi*) that the assignment to *H. S.* was not binding on the reversionary heirs of *G. C. C.*, except as regards the charge on one moiety for expenses incurred and advances made by *H. S.*, whether by way of maintenance or otherwise, with interest thereon at 12 per cent. *BISWANATH CHUNDER v. KHANTAMANI DAS* — ix 76

3. — *Maintenance—Operation of conveyance pendente lite—Conditional transfer.*] *N.*, claiming to be entitled to certain real and personal property as heir of one *J.*, brought a suit under Act XIX of 1841 to obtain possession thereof; and in order to provide funds to carry on the litigation, executed an *ikrar-nama*, whereby he purported to relinquish and convey to one *K.* a moiety of his right, title, and interest in the property, in consideration of the sum of Rs. 50, *K.* agreeing to take all proper steps and to defray all expenses necessary for the recovery of the property, which was valued in the *ikrar-nama* at Rs. 75,000. *K.*, accordingly, carried on the suit and incurred costs to the extent of Rs. 1,700, but the suit was ultimately dismissed. The property was afterwards taken possession of by the Court of Wards on behalf of one *S.*, who claimed under an alleged adoption by one *A.*, the person last in possession. Thereafter *K.* sold his interest under the *ikrar-nama*, which he valued at Rs. 2,18,000, to the plaintiff, for the sum of Rs. 1,700. In a suit brought against the Court of Wards as representing *S.* for the recovery of a moiety of the property or its value, in which *N.* refused to join as plaintiff and was made a defendant, *held*, that the suit was not maintainable; the conveyance by *N.* to *K.* did not operate as a present transfer of the property, but only as an agreement to transfer it on

CHAMPERTY—continued.

conditions which were never fulfilled; the plaintiff was not entitled to recover as against *S.*, who was no party to the deed. *Held* also, that the transaction was void as being contrary to public policy, and one to which effect ought not to be given by the Court. *TARA SOONDAREE CHOWDHRAIN v. THE COLLECTOR OF MYMENSINGH* - - - - xiii 495

4. — *Maintenance — Fraud — Undue influence and threats.*] The three childless widows of a zemindar instituted a suit against the rightful heir to their husband's estate, in which they unsuccessfully disputed his legitimacy. Previously thereto they had obtained advances of money from the present plaintiff, and executed in his favour an agreement and a bond, whereby they secured to him the payment of large sums in case they recovered their husband's estate, and virtually gave to him the entire control of their suit. Subsequently they agreed with the rightful heir to compromise the suit, which compromise however was never acted upon, partly owing, it was alleged, to the subsequent conduct of the heir. At the date of the compromise, the heir who had just attained his majority, and was without proper counsel or assistance, and acted under threats from the plaintiff, a powerful and wealthy banker, that he would carry on the litigation against him *per fas aut nefas*, was induced, contrary to his own judgment and sense of right, and without any evidence that the sum claimed was really due to the plaintiff, to execute a bond in his favour, whereby he bound himself to pay a large sum of money claimed by the plaintiff as being due from the widows; the plaintiff on his part agreeing that he would treat such payment as a satisfaction of his claim against the widows, but meanwhile that he would retain the securities which he held from them. In a suit brought by the plaintiff against the heir to enforce the last mentioned bond, — *held*, that the bond was wholly invalid and fraudulent as against the defendant, and that as there was no privity of contract between the plaintiff and defendant independently of the bond, it could not stand as a security for anything which might be justly due from the widows. *Quære*.—Whether the plaintiff could have recovered from the widows, if they had been successful against the heir, the large sums of money secured by their bond and agreement? The law of champerty and maintenance is not the same in India as in England. The English Statute with regard to champerty is not applicable in the mofussil in India. The Indian Courts in every transaction must decide upon the fact whether it is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive. *CHEDAMBARA CHETTY v. RENJA KRISHNA MUTHU VIRA PUCHANJA NAIKER* xiii P. C. 509

CHAMPERTY—continued.

5. — *Maintenance — Malicious procedure — Reasonable and probable cause — Agreement against public policy — Practice — Security for costs by a person not a party to the suit.*] In a deed, dated 17th July, 1867, it was recited that *A.* was entitled to certain property then in possession of *D.* and *E.*, and that *A.*, and *B.* her husband, "having no funds to adopt or to commence legal proceedings" for the recovery of the property, had applied to *C.* to assist them in commencing and conducting the necessary suits and to make all the requisite disbursements connected therewith until their final termination, and that *C.* had agreed to do so; and also, as *A.* and *B.* had "no means whatever," to pay to them or the survivor Rs. 150 a month until the final termination of the litigation. Then followed the appointment by *A.* and *B.* of *C.* to be their attorney to institute and prosecute all necessary suits, to sign all papers and documents, to receive all moneys and take possession of all lands, &c., to which *A.* and *B.* might become entitled under any decree or order that might be made, and to appoint attorneys and vakeels. *C.* then covenanted to institute and prosecute the necessary suits and to make the necessary advances and payments and to pay Rs. 150 a month to *A.* and *B.* Then it was agreed that out of the moneys or proceeds of lands, &c., recovered, *C.* should, in the first place, retain and reimburse himself all advances and payments made by him with interest thereon at 12 per cent.; in the second place, retain to himself by way of remuneration for his trouble and risk, one-third of the nett proceeds of the litigation; and, in the third place, make over the remaining two-thirds to *A.* and *B.* *A.* and *B.* covenanted not to intermeddle with *C.* in prosecuting the litigation, that they would render him all possible assistance, and that the power of attorney given by them to *C.* should be irrevocable so long as he prosecuted the litigation and paid the monthly allowance of Rs. 150. It was provided, however, that if *B.* wished to devote all his time thereto, he might have the management of the litigation, but under the control of *C.*; and that *A.* and *B.* might revoke the power of attorney on repayment to *C.* of all money advanced by him with interest at 12 per cent.; and the sum of Rs. 2,000 by way of liquidated damages. A power was also reserved to *A.* and *B.* to compromise, but only with the consent of *C.* unless the sum to be received on the compromise should exceed the total amount of *C.*'s advances with interest at 12 per cent. In pursuance of this agreement a suit was instituted in the names of *A.* and *B.* against *D.* and *E.*, to recover possession of the property. This suit was by the High Court decreed in the plaintiffs' favour, but was, on appeal, dismissed by the Privy Council with costs. While the suit was in the Court of first instance, *D.* and *E.* applied to have *C.* added as a party. This application was refused, and *D.* and *E.* did not appeal from that refusal. Pending the litigation, *A.* and *B.* brought a suit against *D.* and *E.* for wasilat, and obtained

CHAMPERTY—continued.

a decree. On the 21st September A. and B. executed a memorandum of agreement, whereby C. purchased all their rights in the two suits brought by them against D. and E. D. and E. now brought a suit against C., alleging that they had suffered loss and damage by the litigation instituted by A. and B.; that C. was guilty of champerty and maintenance; that the litigation was commenced and continued maliciously by C. in the names of persons who had no legal or equitable right, and without reasonable or probable cause; that the agreement of 17th July, 1867, was illegal and contrary to public policy; that the litigation was carried on by C. at his own expense and for his own benefit; and that C. was the real mover in the proceedings, and illegally used the procedure of the Court to the damage and injury of the plaintiffs. *Held*, in the Court below and on appeal, that there was reasonable and probable cause for the institution of the *wasilat* suit brought by A. and B. against D. and E. *Held* by MACPHERSON, J., that the agreement of July, 1867, was illegal and against public policy, as also were the subsequent institution and maintaining of the suit against D. and E. by C.; and that the plaintiffs were entitled to recover from C. the loss they had sustained by reason of the suits which he (substantially only for his own benefit) had maintained against them. *Held* on appeal (reversing the decision of the Court below), that the suit was not maintainable. The English statutes with regard to champerty and maintenance do not apply to India. In England, champerty and maintenance were offences punishable by the Common Law; and the ground on which an action is allowed in England,—*viz.*, that C. had been guilty of an offence by which the plaintiff had suffered damage,—does not exist in India. The only ground on which agreements which savour of champerty or maintenance are held to be void in this country is, that they are contrary to public policy. Assuming that the agreement of July, 1867, was a valid one, and that C. did thereby acquire an interest in the subject-matter of the suit, and supplied the means of carrying it on, such acts did not entitle the plaintiffs to maintain the present suit, or to recover against C. the costs of the former suit. C. ought to have been made a co-plaintiff with A. and B. in the former suit, or he ought to have been called upon to give security for the costs of that suit. **CHUNDERKANT MOOKERJEE v. RAMCOOMAR KOONDoo** - - - - - xiii 530

6. — *Suit for specific performance—Purchase by Mahomedan Mukhtar from Hindu family—Onus probandi.* Where a mukhtar of the Court, a Mahomedan, brought a suit for specific performance of an agreement alleged to have been made by him with the members of a Hindu family, which agreement savoured of champerty, it was *held*, that the plaintiff must show that the claim was certain, fair, and just in every way. The Courts will not countenance

CHAMPERTY—continued.

suits of such a description. **ABED HOSSEIN v. LALLA RAMSARAN** - - - xiii 516 note

CHARGE.

See COMPLAINT.

2. — *Altering charge after plea of guilty.* When an accused pleads guilty to a charge already framed, the Sessions Judge has no power to alter the charge upon the evidence in the record. Upon a charge of murder the accused pleaded 'guilty,' the Sessions Judge, taking into consideration the circumstances of the case, reduced the charge to homicide not amounting to murder. *Held*, that the proceeding was illegal. **QUEEN v. GOBARDHAN BHUYAN** - - - - - iv Ap. 101

CHARGE, CAPTION OF.

See ARREST OF JUDGMENT.

CHARGE, FORM OF.

See FALSE EVIDENCE.

REVISION.

CHARGE TO JURY—Culpable homicide—Penal Code, s. 304. In his charge to the jury the Judge should draw a distinction between the two classes of culpable homicide mentioned in s. 304 of the Penal Code, and direct them to find specially under which, if either, the prisoner was guilty. **QUEEN v. KALICHARAN DASS** - - - - - vi Ap. 86

QUEEN v. AMIR KHAN - - - vi Ap. 87 note

2. — *Proper mode of charging jury and summing up the evidence—Criminal Procedure Code (Act XX of 1861), s. 255.* In this case the Court were of opinion that the Judge's charge to the jury was not a summing up for the prosecution and defence such as is prescribed by s. 255, Act XXV of 1861. Principles for guidance of a Judge in charging a jury laid down. **QUEEN v. RAJCOOMAR BOSE**, [x Ap. 36]

CHARITABLE BEQUEST.

See WILL.

CHARTERER.

See BOTTOMRY-BOND HOLDER.

CHARTER PARTY.

See DAMAGES, SUIT FOR.

2. — *Freight—Bill of lading—Liability of Master where quantity signed for is more than cargo shipped.* The plaintiff chartered a ship of which he was master, to one C. H. C., of Calcutta, under a charter-party, by which it was agreed that the ship (which was then at Melbourne) should proceed to certain ports and there load a cargo for Calcutta, "the cargo to be delivered to the charterer at Calcutta, on being paid freight at and after the rate of the lump sum of £1,150 for the full reach of the ship; the said freight to be paid on the unloading and right delivery of the cargo as customary, less any advances that may have been made." On the arrival of the ship at Calcutta C. H. C. requested the plaintiff to deliver the cargo to the defendants as his agents, which the plaintiff agreed to do on having payment of the freight guaranteed by the defendants. The defendants were *bond*

CHARTER PARTY—continued.

fide holders of the bills of lading which had been signed by the plaintiff in respect of the cargo. They sent to the agents of the plaintiff in Calcutta the following letter: "As it will be necessary for us for the protection of our interests to get delivery of the cargo, and as we do not care about further trouble in the matter, we agree to guarantee payment of the balance of freight due on the charter-party, less any claims for short delivery," &c. On unloading there was found to be a deficiency in quantity between the goods mentioned in the bills of lading and those actually shipped and delivered. *Held* that, notwithstanding this, the plaintiff was entitled to the whole of the freight specified in the charter-party, and was justified in keeping the cargo until the freight was paid. *DODS v. STEWART* viii 340

3. — "*Now on her passage*" — *Breach of warranty — Condition precedent — Principal and agent — Undisclosed principal.*] The plaintiffs entered into a contract of charter-party with the defendants, whereby it was agreed between them and the defendants acting for the owners, "that the steamer *Atholl*, now on her passage to Calcutta, being tight, staunch, and strong, &c., shall receive on board from the charterers a complete cargo of merchandise, to consist of 700 tons dead weight, and being so laden shall therewith proceed to London with liberty to call for any legal purpose at any intermediate port or ports; freight to be paid on the above cargo on right delivery of the same at and after the rate of £4-2-6 per ton; charterers to have the option of cancelling the charter-party, if the steamer has not arrived in Calcutta on 15th April, 1871." The defendants signed the charter-party as "agents of steamer *Atholl*." The steamer was not, at the time the charter-party was entered into, on her way to Calcutta, being then in the port of London, and she did not start for some days after the date of the charter-party. She touched at Madras and Colombo on her way, and did not arrive in Calcutta until 11th April. Rates of freight having declined since the middle of March, at which time, it was alleged, the steamer ought to have arrived, the plaintiff sued the defendants for damages. *Held*, the defendants were liable. The statement in the charter-party that the steamer was on her passage to Calcutta was a condition precedent. *SCHILLER v. FINLAY* — — — — — viii 544

CHEMICAL EXAMINER, REPORT OF.

See EVIDENCE.

CHEQUE TAKEN IN PAYMENT OF BILL OF EXCHANGE.

See BILL OF EXCHANGE.

CHILDREN, ACCESS TO.

See DIVORCE ACT.

CHILDREN, CUSTODY OF.

See DIVORCE ACT.

CHUR LANDS.

See ACCRETION.

2. — *Title—Evidence.*] The cultivation of chur lands, like that of waste or jungle

CHUR LANDS—continued.

lands, carries no *prima facie* character of usurpation or wrong; and the claimant against a purchaser, *bona fide* and without notice, in possession, must strictly prove his title. *EKOWRI SING v. HIRALAL SEAL*, [ii P. C. 4

3. — *Evidence as to position of—Local investigation—Maps.*] In a dispute as to the position of chur lands, where the change in the course of a river threw doubt upon their position, the judgment of the Court of first instance, given after local investigation, was upheld against the decision of the High Court founded on inspection of the maps and on the arguments adduced before it. *SARAT SUNDARI DEBI v. PROSONNO COOMAR TAGORE* — vi P. C. 677

CIRCULAR ORDERS BY JUDICIAL COMMISSIONER OF PUNJAB.

See INDIAN COUNCIL'S ACT.

CIVIL PROCEDURE CODE, s. 1.

See JURISDICTION OF CIVIL COURTS.

—, s. 2.

See RES JUDICATA.
ESTOPPEL.

—, s. 5.

See CAUSE OF ACTION.
LETTERS PATENT, CL. 12.

2. — *Suit for land—Jurisdiction—Mortgage.*] A suit brought upon a mortgage, praying for a decree for the amount due thereunder, and that in default of payment the land mortgaged may be sold, is a suit for land within the meaning of s. 5 of Act VIII of 1859, and is rightly brought in the Court of the district within which the land is situate. *IN THE MATTER OF THE PETITION OF LESLIE* — ix 171

—, s. 7—*Suit for refund of excess payment of rent.*] A. recovered from B., under the terms of his lease, a refund of the excess of rent paid by him in respect of the years 1861, 1862, and 1863. While that suit was pending, B. recovered from A. rent at the same rate in respect of the three succeeding years. *Held*, that A. was entitled to bring another suit against B. for damages in respect of the excess of rent paid by him during the years subsequent to the institution of the prior suit. *NILMANI SINGH v. ANNUNDA PRASAD MOOKERJEE* — — — — — i F. B. 97

2. — *Relinquishment of claim.*] In a suit by members of a Hindu family which had become separate in 1862, to recover certain moneys said to have been misappropriated by the defendant while manager of the joint estate, it appeared that the plaintiffs had previously sued him since the separation to recover certain other moneys belonging to the said joint estate, also said to have been misappropriated by him while manager, and obtained a decree. *Held*, that the present claim should have been included in the former suit; and whether the omission was by mistake or not, it must be taken to have been relinquished, and under s. 7 of Act VIII of 1859 could not now be entertained. *GANESH*

CIVIL PROCEDURE CODE, s. 7—continued.

CHANDRA CHOWDHRY v. RAM COOMAR CHOWDHRY - - - - - iii A. C. 265

3. — *Splitting cause of action.*] A plaintiff is bound to include in his plaint all the grounds upon which his suit is based. A second suit upon a different ground, which existed before the commencement of the first suit, would not be allowed, as it would be splitting the cause of action. **ABHIRAM DOSS v. SEIRAM DOSS** - - - - - iii A. C. 421

4. — *Splitting cause of action.*] At a sale for arrears of rent, A. became the purchaser of a certain patni talook. B., whose patni right had been sold, sued for and obtained a decree for reversal of the sale on the ground of irregularity. In the meantime, A. had committed default, and the patni was again sold for arrears of rent. The zemindar drew out from the Collectorate the amount due to him. C., who had bought B.'s right, title, and interest in his decree, now sued A. for recovery of the surplus proceeds of sale in the hands of the Collector, and obtained a decree. He afterwards sued A. for mesne profits for the time during which he was in possession of the patni talook. This was a suit by C. against A. for recovery of the amount drawn out by the zemindar, on the ground that, in consequence of A. having collected the rents from the talook, which were to go towards payment of the rent due to the zemindar, and having fraudulently withheld such payment, he had sustained damage to the extent of the amount taken by the zemindar. *Held*, that the suit was barred by s. 7, Act VIII of 1859. **TARINI PRASAD GHOSE v. KHUDUMANI DABI** - v 184

TARINI PRASAD GHOSE v. RAGHAB CHANDRA BANDOPADHAYA - - - - - v 187 note

5. — *Splitting Cause of Action—Promissory note payable by instalments—Act IX of 1850, s. 34.*] When two or more instalments of a promissory note, payable on the face of it by instalments, are due, the holder of the note is not at liberty to sue separately for each instalment or for some of them; he must sue for all the instalments due in one action. A judgment recovered in a suit for one instalment when others are due is a bar to a suit subsequently brought for the latter. **MACKINTOSH v. GILL** - - - - - xii 37

6. — *Splitting cause of action—Suit for fresh accretions.*] Suing for new accretions after a former suit is not a splitting of action within the meaning of s. 7 of the Civil Procedure Code. **PAHALWAN SINGH v. MAHESSUR BUKSH SINGH; MAHESSUR BUKSH SINGH v. MEGHBURN SINGH** - - - - - ix P. C. 150

7. — *Splitting cause of action—Suit to set aside mortgage by Hindu widow.*] A Hindu widow executed deeds of gift, in which her late husband's mother, the nearest reversioner, concurred. After the death of the widow, but in the lifetime of the mother, the next presumable reversioner sued to set aside the deeds and for possession. Such suit was held to be no

CIVIL PROCEDURE CODE, s. 7—continued.

bar to a second suit by the same plaintiff to set aside a mortgage by the widow and the mother of the deceased of a portion of the property which was the subject of the first suit, although in that suit the property was described as subject to the mortgage, and the name of the mortgagee was mentioned. The true test of the application of s. 7 of Act VIII of 1859 is, whether there has been a splitting of the cause of action. **KOOR GOLAB SINGH v. RAO KURUN SINGH; RAO KURUN SINGH v. MAHOMED FYAZ ALI KHAN**, [x P. C. 1

8. — *Multifariousness.*] S. 7 of Act VIII of 1859 does not bar a suit for a declaration that property in the defendant's possession is subject to the mortgagee's lien, on the ground that such property was part of the property mortgaged, and was not included in a previous suit against other parties for other portions of the property. **IN THE MATTER OF THE PETITION OF HURRY MOHUN PARAMANICK** - - - - - xiv 418 note

—, s. 8.

See MULTIFARIOUSNESS.

2. — *Misjoinder of causes of action.*] One of three widows of a Mahomedan sued the other two, together with her deceased husband's sons and other heirs, for possession of 18 out of 96 sehans of property left by the deceased, to which she was entitled by right of inheritance under the Mahomedan law; and to set aside two deeds of bai-mukasa, or gift in lieu of dower, one dated 28th July, 1842, granted in favour of one widow over a part of the property in suit, and the other dated 14th March, 1847, in favour of the other widow, over other portions of the same property. The lower Appellate Court dismissed the suit on the ground of a misjoinder of causes of action, and that there were two causes of action which could not be tried together under Act VIII of 1859, s. 8. *Held per KEMP, J.* (whose opinion as senior Judge prevailed), that there was no misjoinder of causes of action; that the case must be remanded to the Judge for trial on the merits. *Held per GLOVER, J.*—This was such a misjoinder as was provided against by s. 8 of Act VIII of 1859, and that the Judge was right in dismissing the suit. **AMIRAN v. ASIHUN** - - - - - iii A. C. 190

8. — *Suit for possession and for rent.*] The plaintiff sued in the Munsif's Court for possession of his house and for rent. *Held*, that these were two causes of action which could be properly joined in one suit; and that although the amount of rent sued for was within the jurisdiction of the Small Cause Court, yet, as the Small Cause Court could not give all the relief sought, the suit was properly brought in the Munsif's Court. **JAGOMOHAN SAHU v. MANI LAL CHOWDHRY** - - - - - iii Ap. 77

4. — *Jurisdiction—Valuation.*] The words of s. 8, Act VIII of 1859, "cognizable by the same Court," refer to the nature of the suit and not to its value, therefore a Principal Sudder

CIVIL PROCEDURE CODE, s. 8—continued.

Ameen was held to have jurisdiction under that section to try a suit for land and for mesne profits, the entire claim not exceeding his jurisdiction, although the value of the suit, so far as the claim was for land, was below the value cognizable by him. **LUCHMEE PERSHAD DOOBEY v. MUSST. KALLASOO** - Sup. Vol. 630

5. — *Suit for possession, for damages for refusal to register, and to enforce registration.* The owner of a share in a talook granted a sepatni thereof to the plaintiff, but before registration granted a sepatni to the Bengal Coal Company. In a suit against the owner and the Company for possession of the sepatni talook, for damages caused by the refusal to register, and also for compelling registration of the sepatni talook,—*held*, that three distinct causes of action were improperly joined. **PRABHURAM HAZRA v. ROBINSON** - - - iii Ap. 49

—, s. 14—*Res judicata—Jurisdiction—Suit for land.* A. brought a suit in the Court of S. against B. for certain land as being an accretion to an estate in the district of S. B. claimed it as being part of his estate in the district of G., to which district he alleged the land had, in a former decision, been found to belong. The Court of S. held, that the land was an accretion to A.'s estate in the district of S. In a subsequent suit brought by B. in the Court of G. against A. for the land to which the subject of the former suit had been found to be an accretion, *held*, that the holding in the former suit necessarily decided that the land claimed by B. was in the district of S., and therefore that the Court of G., under Act VIII of 1859, s. 14, had no jurisdiction. **PAHALWAN SINGH v. MAHESUR BUKSH SINGH**, [xii F. C. 391]

2. — *Survey award—Order of Magistrate under Act IV of 1840—Adjudication by competent authority.* Neither an order by a Magistrate under Act IV of 1840 as to possession of lands, nor an award by the Survey Authorities, is an adjudication by a competent authority within the meaning of the proviso in s. 14 of Act VIII of 1859, such as to preclude an enquiry by a Civil Court under that section as to whether lands in dispute are within the local limits of the Court's jurisdiction. **HUREONATH ROY v. SCOTT** - Sup. Vol. 636

—, s. 15.

See CIVIL PROCEDURE CODE, s. 246.
DECLARATORY DECREE, SUIT FOR.

—, s. 17, cl. 2.

See SERVICE OF SUMMONS.

2. — *Recognized agent—Gomasta.* A recognized agent, under cl. 2, s. 17, Act VIII of 1859, cannot prosecute or defend a suit in his own name. A gomasta of a firm ceases to be a recognized agent under cl. 2, s. 17, Act VIII of 1859, when the business of the firm ceased before the institution of the suit, **MOKHA HARAKRAJ JOSHI v. BISESWAR DOSS**, [v Ap. 11]

—, s. 26.

See PLAINT;

CIVIL PROCEDURE CODE, s. 30.

See APPELLATE COURT.

—, ss. 30 and 36.

See APPEAL.

—, s. 31.

See APPELLATE COURT.

—, s. 34—*Security for costs pending appeal.* A plaintiff who resided out of India paid a sum of money into Court as security for costs, under s. 34 of Act VIII of 1859. He subsequently obtained a decree against the defendant, and the defendant appealed against that decree. *Held*, that the defendant was not entitled to an order detaining in Court, pending the appeal, the money which had been paid in under s. 34. **FLEMING v. SHEARMAN**, [iv O. C. 92]

See IN RE DITTA HARAKMAN SINGH,

[iii F. B. 45]

2. — *Security for costs of plaintiff residing out of jurisdiction—Suit for administration.* The provisions of s. 34, Act VIII of 1859, are not intended to apply to a case where the plaintiffs bring a suit for administration and partition of property in which they are entitled to a share, the extent of the share being in dispute. **RUSSICK LALL DAY v. JADUBRAM DAY** - - - x Ap. 25

3. — *"Immoveable property"—Leasehold.* Leasehold property is immoveable property within the meaning of s. 34, Act VIII of 1859. **ULLMAN v. THE JUSTICES OF THE PEACE FOR CALCUTTA** - - - - - vii Ap. 60

—, s. 39—*Reception of documents after filing of plaint—Ground of appeal.* Reception of documents under s. 39, Act VIII of 1859, by the Court of first instance cannot be a ground of appeal. The sanction of the Court receiving the documents clears the defect of their not having been tendered with the plaint. **GOSAIN TOTA RAM v. RAJA RUKINIBALLAR**, [iii F. C. 34]

—, s. 73.

See INSOLVENCY.
ONUS PROBANDI.
PARTIES.

2. — *Construction of.* The words in s. 73 of Act VIII of 1859, "who may be likely to be affected by the results," construed to mean "likely to be affected, if added as parties." **NGA THA YA v. MI KHAN MEAW** - v 371

3. — *Parties—Suit for possession—Farm of decree.* In a suit to recover possession of a certain mauza, claimed by the plaintiff as a portion of his darpatni talook, which was brought against several defendants, four other persons applied to be made defendants on the ground that they were co-sharers with the defendants on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed, and on the proofs which they adduced, the plaintiff's claim was dismissed. The plaintiff's claim

CIVIL PROCEDURE CODE, s. 73—*continued*.

as against the original defendants, who made no opposition, was decreed. In special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against any body else but the person against whom he had brought the suit, *held*, that s. 73, Act VIII of 1859, leaves to the Courts of original jurisdiction a discretion in such cases; that the section is not limited entirely to cases where the suit as framed cannot proceed; that the words "persons who may be likely to be affected by the result" do not mean persons on whom the result would be legally binding. *KALIPRASHAD SING v. JAINARAYAN ROY* - - - - - iii A. C. 24

4. — *Intervenor — Appeal — Reversal of whole decree on appeal by one defendant.*] *D. C. S.*, the zemindar, brought a suit against *B.*, a ryot, for recovery of arrears of rent, value below Rs. 100. *B.* set up in defence that the rent was not payable to *D. C. S.*, but to *N. C. A.*, the mokurruceedar. *N. C. A.*, who claimed under a mokurruce title, and alleged that he was in the receipt of the rents from the ryot, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by *N. C. A.*, which was heard and decided by the Subordinate Judge, on reference by the District Judge, the decree of the first Court was reversed, and the suit dismissed. On appeal to the High Court, *held*, that *N. C. A.*, was properly made a party defendant to the suit. *DOYAL CHAND SAHOY v. NABIN CHANDRA ADHIKARI* - - - - - viii 180
RUNJEET SARDU v. GURU BAKSH KOER,
[viii 184 note]

5. — *Raising issues.*] S. 73 of the Civil Procedure Code enables the Court to bring in as parties to the suit any person whose rights appear to be involved, and who may be affected by the result of the suit. It does not enable parties, who are not liable to be affected by the result, to come in and raise altogether new issues which do not properly arise. Where the parties, however, all acquiesced in the irregularity, and the suit went to trial on the issues raised by the added defendant, the High Court did not think it necessary to quash the proceedings. *PADMALOHAN SEN v. LAL CHAND GUPTA* - - - - - i S. N. xxvi

6. — *Suit to set aside certificate and for possession.*] The plaintiff claimed to be entitled, as cousin of one *M.*, to 12 annas of the estate left by *M.*, and brought a suit against the two widows of *M.*, to whom a certificate had been granted under Act XXVII of 1860, to set aside the certificate, and for possession of the estate with mesne profits from the death of *M.* to this suit. *N.* and others, who claimed to be entitled to a portion of the property specified in the plaint, intervened, and asked to be made defendants under s. 73 of Act VIII of 1859. *Held*, that they were not parties likely to be affected by the result, within s. 73, of the suit, and should

CIVIL PROCEDURE CODE, s. 73—*continued*.

not have been made parties to the suit. *AHMED HOSSEIN v. MUSST. KHADIJA*,
[iii A. C. 28 note]

—, s. 78 — *Prisoners' Testimony Act (XV of 1869)*—*Mofussil Small Cause Court, Judge of—Defendant in custody.*] A Judge of a Small Cause Court in the mofussil can direct the jailor to bring up before the Court, at the hearing of the suit, a defendant committed to custody, under s. 78 of Act VIII of 1859, without having recourse to the procedure under Act XV of 1869. *KILARAM MAJI v. NARAYAN DAS* - - - - - v 215

—, s. 81.

See INSOLVENCY.

2. — *Attachment before judgment — Execution of decree — Jurisdiction — Endorsement of decrees under Act XXIII of 1840, s. 1.*] The words in s. 81 of Act VIII of 1859, "where the defendant is about to dispose of his property or any part thereof," refer only to property within the jurisdiction of the Court where the suit is pending; therefore, where an order under that section by the First Subordinate Judge of the 24-Pergannas in respect of property in Calcutta was sent up to the High Court, in order that it might be endorsed in accordance with the provisions of s. 1 of Act XXIII of 1840, the High Court refused to endorse it. *BALARAM MULLICK v. SOLANO* - - - - - viii 335

—, s. 92.

See INJUNCTION.

—, s. 97 — *Withdrawal from suit — Costs.*] Where the plaintiff applied under s. 97, Act VIII of 1859, to be allowed to withdraw from the suit, with liberty to bring a fresh suit for the same matter, the Court refused the application. Another application for leave, simply to withdraw from the suit, was granted, the Court dismissing the suit with costs. *BRASS v. Tiruvengada Pillai*, dissented from. *HOSAINI BIBI v. PERI KHANUM* - - - - - i O. C. 45

2. — *Dismissal of suit—Procedure.*] The power to dismiss a suit, with liberty to bring a fresh one for the same matter, is limited to cases where the suit fails by reason of some point of form: such liberty should not be given where, after issue joined, the plaintiff has failed to make out his case. *WATSON v. COLLECTOR OF RAJSHAYE*, iii P. C. 48

—, s. 100.

See CAUSE OF ACTION.

—, s. 110—*Non-appearance of plaintiff—Dismissal for default — Fresh suit.*] When a suit is dismissed for default of the plaintiff, and no appearance has been entered by the defendant, the plaintiff can, under s. 110, Act VIII of 1859, bring a fresh suit after a lapse of thirty days, if it be not otherwise barred by lapse of time. *NABADWIP CHANDRA SIKHAR v. KALINATH PAL* - - - - - iii Ap. 180

—, s. 111—*Non-appearance of defendant — Adjourned hearing—Costs.*] A case had been placed on the undefended board in consequence

CIVIL PROCEDURE CODE, s. 111—*continued*.

of the non-appearance of the defendant, and the hearing had been adjourned at the instance of the plaintiff to a subsequent day. On that day the defendant appeared, and it was contended that he could not be heard until he had shown good cause for his previous non-appearance, or at least that the Court would put him on terms. The Court *held*, that the defendant was entitled to appear as a right, and on application that he should pay the costs of a postponement was refused. The costs were ordered to be costs in the cause. *NEWTON v. KURNEEDHONE* - - - ix Ap. 15

—, s. 114—*Dismissal of former suit for default.*] The plaintiff bought from L. an estate, which L. had purchased from G. L., sued G. for confirmation of possession, and that suit was dismissed for default. The plaintiff's purchase was made pending that suit. In a suit for possession on the allegation of dispossession, *held*, that the plaintiff's suit was not, under s. 114 of Act VIII of 1859, barred by the former decision against L. *MAHABIR PRASAD v. LALA RAM* - v 327 note

—, s. 119—*Validity of attachment.*] The effect of granting an application under s. 119 of Act VIII of 1859, is to declare that there has not been yet a valid decree in the suit, and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid. *LALA JAGAT NARAYAN v. TULSIRAM* - - - i A. C. 71

2. — *Ex parte decree—Absence of defendant on adjourned hearing—Nonappearance.*] S. 119, Act VIII of 1859, does not apply to a defendant who is only absent on an adjourned hearing. It relates only to one who has never appeared. *GORACHAND GOSWAMI v. RAGHU MANDAL* - iii Ap. 121

3. — *Non-appearance of defendant after filing written statement.*] A defendant filed a written statement in a suit, and when the case was called on for final disposal, an application was made by counsel on his behalf for an adjournment, but the application was refused, and no one appearing for him, the case was proceeded with, and a judgment was obtained by the plaintiff. The defendant afterwards applied for an order, setting aside the judgment, on the ground that he was prevented from appearing when the suit was called on. *Held*, that the application was within s. 119 of Act VIII of 1859, and the Court had no power in granting the order to impose terms as under s. 111. *ADMINISTRATOR-GENERAL OF BENGAL v. LALA DYARAM DOSS* - - - vi 688

4. — *Suits for rent—Beng. Act VIII of 1869, s. 34.*] S. 119 of Civil Procedure Code (Act VIII of 1859) is made applicable to rent suits under Beng. Act VIII of 1869, by the provisions of s. 34 of the latter Act. *DRABAMAYI GUPTIA v. TARACHARAN SEN*, [vii 207]

5. — *Appeal from ex parte decree.*] A suit was postponed on the application of the

CIVIL PROCEDURE CODE, s. 119—*continued*.

defendant's pleader; but on his applying for further adjournment at the time fixed for hearing, the application was refused; the Court tried the case, the defendant not appearing, and not being represented, and gave a decree for the plaintiff. An appeal was allowed, and the case was sent back for re-trial. *AMRITNATH JHA v. ROY DHUNPUT SINGH*, [viii 44]

6. — *Act X of 1859, s. 58—Ex parte decree, application to set aside.*] Process for enforcing judgment is executed within the meaning of s. 119 of Act VIII of 1859 and s. 58 of Act X of 1859, when an attachment of the property of the defendant has taken place: and any application by the defendant under those sections to set aside an *ex parte* decree must be made within thirty and fifteen days respectively from the date of the attachment. *RADHA BINODE CHOWDHEY v. DIGAMBUREE DOSSEE; NUND KISHORE DOSS MOHUNT v. MAHARAJA OF BURDWAN* - Sup. Vol. 947

—, s. 121.

See SET-OFF.

—, s. 122 and s. 124.

See WRITTEN STATEMENT.

—, s. 128—*Documentary evidence.*] Parties are required to have with them in Court, at the first hearing of the suit, all their documentary evidence, but need not file it then, unless it is called for. *MAHBUB HOSSEIN v. PATASU KUMARI* - - - i A. C. 120

—, s. 148—*Fresh evidence—Remand.*] When a case is remanded by an Appellate Court under s. 148, Act VIII of 1859, with a direction that it shall be proceeded with, the Court of first instance has no authority to receive new evidence, nor the lower Appellate Court to decide thereupon. *PADMA LOCHAN v. SIRDAR KHAN*, [iii Ap. 91]

—, s. 162.

See WITNESSES.

—, s. 170.

See WITNESSES.

2. — *Nonattendance of witness.*] The discretion which a Court has, under s. 170 of Act VIII of 1859, of passing judgment against a party for noncompliance with the Court's order to attend and give evidence or produce documents in a suit, is not confined to cases where the party summoning him cannot prove his case otherwise than by the evidence of such other party, or where the fact to be proved is solely and exclusively within the knowledge of such other party. *KASHINATH SHAHA v. DWARKANATH SIKKAR* - - - ix 215

ISHAN CHANDRA GHOSE v. HARISH CHANDRA BANERJEE - - - ix 218 note

3. — In a suit for contribution in respect of Government revenue, the defendants, co-sharers, were, on the application of the plaintiff, ordered to attend to give evidence, but they failed to appear. The principal *Sudder Ameen* thereupon dismissed the suit,

CIVIL PROCEDURE CODE, s. 170—continued.

on the ground that as the plaintiffs case had not been established, he was not entitled to a decree simply by reason of the defendants' failure to enter appearance. *Held*, the suit should not have been dismissed. In a case where a party summoned to attend as a witness refuses to attend and give evidence, and the party who requires the evidence is unable to make out his case without it, his suit should not be dismissed for want of proof, when the points on which he fails depend upon matters of fact which may reasonably be presumed to be peculiarly in the knowledge of the defaulting parties, as for instance in the present case, the extent of their own shares, and the amount they had paid on account of revenue. *HEMANGINI DAS v. RAMNIDHI KUNDU* - - - 1 S. N. x

—, s. 177—*Native prince or State in alliance—Kingdom of Ava.* The Kingdom of Ava is not the territory of a Native Prince or State in alliance with the British Government within the meaning of s. 177 of Act VIII of 1859. *AGA MOHAMMED JAFFER TEHRANI v. MIRZA NAZIRULLA* - - - 11 A. C. 78

—, s. 179.

See COMMISSION.

—, s. 180.

See AMEEN.

—, ss. 196, 197.

See ACT XXIII OF 1861, s. 11.

—, s. 200.

See RESTITUTION OF CONJUGAL RIGHTS.

2. — *Execution of decrees — Decree for performance of a particular act by the judgment-debtor.* A decree had been obtained that "the defendants do, within six weeks after the service upon them of this decree, remove the obstruction and re-open the pathway or lane leading from the north-west end of the plaintiff's house, north-wards to a public road, as the same existed before the commencement of the suit and as described in the plaint." *Held*, that this was a decree for the performance of a particular act on the part of the defendants, and must be executed under the provisions of s. 200, Act VIII of 1859,—i. e., by imprisonment of the party or attachment of his property, or by both: therefore, an order for execution of the decree by causing the obstruction to be removed was set aside as illegal. *BHOOBUN MOHUN MUNDUL v. NOBIN CHUNDER BULLUB* - - - x Ap. 12

—, s. 203.

See REPRESENTATIVE OF DECEASED PERSON, SUIT AGAINST.

—, s. 204—*Execution of decrees against surety—Stay of execution on security being given.*

Where a sale in execution of a decree was stayed on the security given by a third party, *held* that, on default by the defendant, the decree could not be summarily enforced against such surety under s. 204 of Act VIII of 1859. *GAJENDRANARAYAN ROY v. HEMANGANI DAS*, [iv Ap. 27

CIVIL PROCEDURE CODE, s. 204—continued.

2. — *Act XXIII of 1861, s. 8—Surety-bond—Execution.* A surety-bond taken by the Court under s. 8 of Act XXIII of 1861, after judgment has been pronounced, can be enforced under s. 204 of Act VIII of 1859. *ABDUL KURREEM v. ABDUL HUQ KAZEE*, [viii 205

3. — *Execution of decrees — Surety.* A suit was instituted by C. against H. S. in the Hooghly Court, and was dismissed with costs. On appeal by the plaintiff the defendants obtained an order in the High Court, calling on C. to give security for costs in the Court below, and on appeal, and one R. had, as surety, charged his house in Calcutta with the payment of costs to the extent of Rs. 2,000. The appeal was dismissed with costs, amounting to more than Rs. 2,000. On an application by the defendants for execution against R. under s. 204, Act VIII of 1859, by attachment and sale of the house, the Court granted the application. *HIRALAL SEAL v. CARAPIET* - ix Ap. 17

4. — *Execution of decrees against surety, pending appeal.* H. obtained a decree in the High Court against S. for certain moveable and immoveable property. S. appealed to the Privy Council. While that decree was pending, H. applied for the execution of her decree, and N. became her surety for Rs. 10,000. The decree, however, was not executed. The Privy Council reversed the decision of the High Court, and dismissed the suit of H. with costs. S. then sought to execute his decree for costs against N., the surety. *Held*, that N. was not liable. *IN THE MATTER OF THE PETITION OF NAFUR CHUNDER PAUL CHOWDREY* vi Ap. 126

5. — *Order cancelling security-bond.* Where a person becomes a surety in the course of the proceedings on an appeal, to pay all such sums as may be decreed against the plaintiff on appeal, the decree when passed can be executed against the surety under s. 204 of the Civil Procedure Code, and an appeal will lie from an order made in execution of such decree against the surety. Where a person became surety, and gave a security-bond, undertaking to pay all sums of money that might be decreed against the plaintiff on the defendant's appeal, and the appeal was dismissed for default, and on the application of the plaintiff the Recorder made an order cancelling the bond, and returned it to the surety without notice to the defendant, and afterwards the defendant's appeal was on application restored, and a decree passed against the plaintiff,—*held*, that the Recorder's order was invalid, and execution could issue against the surety notwithstanding that order. *AKHUT RAMANA v. AHMED YOUSAFFJI* - - - vii 81

—, s. 205.

See ATTACHMENT.

—, s. 206—*Execution of decrees.* Where a decree had been obtained for a certain sum of money without interest, and afterwards a kistbandi was filed, by which the decree-holder

CIVIL PROCEDURE CODE, s. 206—continued.

and the judgment-debtor agreed that the amount of the decree should be paid by instalments with interest, and the judgment-debtor had, by his conduct for several years, treated the kistbandi as if it were a decree,—*held* that, under the circumstances of the case, the judgment-debtor could not afterwards object that the kistbandi could not be executed as a decree, and that a fresh suit should be brought upon the kistbandi; but the decree-holder was entitled to take proceedings on the kistbandi as if it were part of the original decree. *DINONATH SEN v. GURUCHURN PAL*, xiv 287

2. — There is no procedure under Act VIII of 1859 under which execution can be taken out upon a kistbandi filed in Court after decree, which has not been incorporated with the decree. *MADHUB CHUNDER DRUNPUT v. MADHUB LALL KHAN* - - - xiv 288 note

3. — Where a decree was obtained for a sum of money, and afterwards by an arrangement between the judgment-debtor and the decree-holder it was agreed that the decree should be payable by instalments with interest at a very high rate, and payments had subsequently been made of large sums of money in the terms of the arrangement, and a balance remained due, it was held that the decree-holder could not recover in execution of the decree any sum beyond what was stated in the decree. *KANHYALAL PUNDIT v. COLLECTOR OF CUTTACK* - - - xiv 291 note

4. — *Bond given in satisfaction—Default in paying.* Where a judgment-debtor executed a kistbandi, or instalment-bond, providing for the satisfaction of the decree which had been obtained against him, and subsequently failed to pay according to the terms of the kistbandi,—*held*, that the decree-holder could enforce his claim under the terms of the kistbandi by proceeding in execution, and need not file a fresh suit. *TARIF BISWAS v. KALIDASS BANERJEE* - - - ii A. C. 223

5. — *Reg. VII of 1799, decrees under.* S. 206 of Act VIII of 1859 does not apply to decrees under Reg. VII of 1799. *GOPAL CHANDRA DEY v. PEMU BIBI* - - - i A. C. 76

6. — *Bond payable by instalments—Part-payment—Execution of decree—Limitation.* A judgment-creditor is entitled to prove payments made according to the terms of a kistbandi, for the purpose of shewing that his right to sue out execution under the kistbandi was not barred by limitation. *Quere.*—Whether part-payments under a decree may not be proved although they have not been made through the Court, or certified to the Court under s. 206 of Act VIII of 1859. *BHUBONESWARI DEBI v. DINANATH SANDYAL*, [ii A. C. 320]

7. — *Decree payable by instalments—Part-payment—Execution of decree—Limitation.* Where a creditor has obtained a decree for money payable by instalments, the whole amount to become due on failure by the debtor to pay one of the instalments, he is,

CIVIL PROCEDURE CODE, s. 206—continued.

upon failure, entitled, notwithstanding s. 206 of Act VIII of 1859, to come into Court and certify to the Court, and prove payment of the earlier instalments to show that execution of his decree is not barred. *FAKIR CHAND BOSE v. MADAN MOHUN GHOSH* - - - iv F. B. 130

8. — The Court cannot recognize any arrangement between the parties enlarging the period of limitation allowed by law for the execution of decrees, or which alters the terms of the decree. *KRISHNA KAMAL SING v. HIRU SIRDAR* - - - - - iv F. B. 101

9. — *Act XXIII of 1861, s. 11—Part satisfaction of decree not certified to the Court—Suit to recover money so paid after execution of entire decree.* A., a judgment-debtor, paid to B., the decree-holder, a sum of money by way of compromise in full satisfaction of the decree. B. failed to certify this payment to the Court, and afterwards executed her decree for the full amount. In a suit by A. against B. for recovery of the amount previously paid out of Court in satisfaction of the decree, *held* that, notwithstanding s. 11 of Act XXIII of 1861, the suit was maintainable. *GUNAMANI DAS v. PRANKISHORE DAS* - - - v F. B. 233

10. — *Satisfaction of decree—Release without consideration—Adjustment otherwise than through the Court.* A. had obtained a decree against B., C., and D., in execution of which the sheriff attached certain property belonging to B., C., and D., who were carrying on business in partnership. The property was sold, and the proceeds paid into Court, and by order of Court, A. received a sum in part satisfaction of his decree. Subsequently A., at the request of B., and without receiving any consideration, gave him a letter in Bengali, purporting to be a release to him of the remainder of his decree, but such adjustment was not made through the Court. A. afterwards applied for execution of his decree against B., C., and D., but his application was refused, the Court treating the letter as a release. A. appealed. *Held* on appeal, that the letter was not a release; there was no consideration for it. The adjustment of the decree should have been made through the Court or certified to it in accordance with s. 206, Act VIII of 1859. *BHUBUN MOHAN BONNERJEE v. SADU CHARAN SIKKAR* - - - - - vi 339

11. — *Agreement between parties for payment of decree by instalments—Subsequent application for execution.* C. obtained a decree against N. for payment of a certain sum of money. Various applications were made to execute the decree, and on one of them, in September, 1869, the sum of Rs. 1,000 was paid. Subsequently, on December 16th, 1870, it was arranged, upon a petition of N. and the consent of A., that a further payment of Rs. 1,000 should be made, and that the balance of the debt should be paid with interest at the rate of 1 per cent. per month by monthly instalments of Rs. 125. In May 1872, C. applied for execution for recovery of

CIVIL PROCEDURE CODE, s. 206—continued.

the balance due on the decree, deducting the amount received under the arrangement. *Held*, he was not entitled to execution in supersession of the agreement. **CHUNDER NATH MISSEK v. GOURIE KOMUL BHUTTACHARJEE** — — — — — x Ap. 28

12. — *Kistbandi — Effect of, on decrees.*] A kistbandi, or arrangement to pay by instalments the amount of a decree obtained upon a bond, does not effect an extinction of the original debt or the mortgagee's lien upon property mortgaged to him by the bond. **RAMCHURN LALL v. KOONDUN KOOMARKE**, [xiv 423 note

—, s. 207—*Joint decree—Limitation—Act XIV of 1859, s. 20.*] A joint decree for damages was obtained by several plaintiffs in the Court of the Principal Sudder Ameen of Patna in 1854, and was kept alive by endeavours to execute it till 1861. On the 15th June, 1861, the Court passed an order modifying the costs of the original decree, but this order was reversed on appeal on the 19th August, 1862. Some of the plaintiffs having died in the meantime, an application was made on the 29th July, 1863, and an order was passed thereon, on the 26th May, 1864, whereby the present decree-holders were substituted for the deceased plaintiffs. A new Principal Sudder Ameen was appointed on the 10th December, 1864, and he reversed that order, and required from the present decree-holders a certificate of heirship, which they obtained on the 16th September, 1865. On the 20th of the same month, an order for execution was made by the Principal Sudder Ameen, but it was reversed by the Judge on appeal, on the ground that the order of the 26th May, 1864, was not a proceeding within the meaning of s. 20 of Act XIV of 1859; and, therefore, the application for execution was too late. *Held*, that execution might have been obtained under s. 207 of Act VIII of 1859 by the survivors of the original decree-holders for the benefit of all parties interested in it. The order of the lower Appellate Court was reversed. **TEJA SINGH v. RAJNARAYAN SINGH**, [i A. C. 62

2. — Three persons obtained a joint decree. Two of them took out execution, and realized each his own share. The third applied for execution within three years from the time of the last proceedings taken by the other two, but after a lapse of three years from the last proceedings taken jointly by all three. *Held* that, under s. 207, Act VIII of 1859, there was no severance of the decree, and therefore the proceedings taken by the two kept the decree alive. **AZIZUNNISSA KHATUN v. SHASHI BHUSHAN BOSE** ii Ap. 47

—, s. 208 — *Execution of decree — Assignment of decree — Power of Court to which decree has been transmitted.*] The assignee of a decree should apply to the Court which passed the decree, and not to the Court to which the decree had been forwarded under s. 285, Act VIII of 1859, for execution,

CIVIL PROCEDURE CODE, s. 208—continued.

for the purpose of being substituted in the place of the original decree-holder. The word 'Court' in s. 208, Act VIII of 1859, does not include the Court to which a decree has been transferred for execution. **SHEO NARAYAN SING v. HARBANS LAL** — v 497

2. — *Appeal—Assignee of decree.*] Under s. 11, Act XXIII of 1861, no appeal lies from an order passed under s. 208, Act VIII of 1859, substituting the assignee of a decree in place of the original decree-holder. **MEGH NARAYAN SING v. RADHA PRASAD SING**, [iv A. C. 200

—, s. 209.
See SET-OFF.

—, s. 210 — *Execution of decree — Claim by personal representative of judgment-debtor.*] Where it was sought to execute a decree obtained against a person who had died since the date of the decree, by attaching certain immoveable property in the possession of the personal representative of the deceased judgment-debtor, and such personal representative claimed to hold the property not in her representative character, but in her own right, — *held*, that her claim was not a claim under s. 246, Act VIII of 1859, but that the case came under ss. 210 and 211. **AMEERUNNISSA KHATOON v. MEER MOZUFFER HOSSEIN CHOWDHRY** — — — — — xii 65

2. — Where, during proceedings in execution of a decree, the judgment-debtor dies, the transferee of his property should be put on the record in place of the deceased, or a regular suit should be brought against him. He should not be treated as a claimant under s. 246, Act VIII of 1859. **SHURFUN BIBEE v. COLLECTOR OF SARUN** — — — xii 66 note

3. — *Execution of decrees passed against deceased person.*] When a decree has been passed against a deceased person, execution of such decree cannot be had under the Civil Procedure Code against his legal representative. **IN THE MATTER OF THE PETITION OF GIRENDRONATH TAGORE** — — — xiv 334 note

—, s. 214—*Execution of decrees — Investigation of title.*] Neither s. 214, Act VIII of 1859, nor s. 15, Act XXIII of 1861, contemplate any inquiry before the Court whether the property belongs to the judgment-debtor or not. **SURJAN BIBEE v. SHEIKH SARIUTULLA**, [iii A. C. 413

—, s. 216 — *Execution of decrees — Notice—Limitation—Act XIV of 1859, s. 20—Proceeding to enforce decree.*] The service of a notice under s. 216 of Act VIII of 1859, if made *bonâ fide* with a view to take further proceeding, is sufficient to keep a decree alive. **MAHTAB CHAND BAHADUR v. LAKSHI BIBEE**, [vi Ap. 146

—, s. 217 — *Dismissal for nonappearance when no day was fixed for hearing.*] Against an application for execution of a decree after notice under s. 216, Act VIII of 1859, the judgment-debtor presented by his pleader

CIVIL PROCEDURE CODE, s. 217—continued.

certain grounds of objection, and the petition was ordered to be placed on the record. No day for hearing was fixed, but the case was called on, and on account of the absence of his pleader, the objections of the judgment-debtor were disallowed. *Held*, that notwithstanding the absence of the pleader, the Judge should have taken the objections into consideration and passed an order under s. 217. **RAJBALLAB SHAHA v. RAMSADAY GHOSE** - - - v Ap. 65

—, s. 231 and s. 234.

See EXECUTION OF DECREE.

—, s. 229—*Resisting execution of decree—Jurisdiction.*] A. and B. obtained a decree for possession of land against C. On their proceeding to execute their decree, D., who was in possession, presented a petition to the Munsif, complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried, on remand from the Judge, as a suit under the provisions of s. 229 of Act VIII of 1859. *Held per JACKSON, J.*, that as the decree-holder had not complained that the officer of the Court had been obstructed or resisted by the claimant, the case did not fall within s. 229 of Act VIII of 1859; and, therefore, the Court had not jurisdiction to take summary cognizance of the case. **BUHAL SING CHOWDHRY v. BEHARILAL** - - - - - i A. C. 206

—, s. 230.

See ONUS PROBANDI.

2. — *Title—Possession.*] A. and B. obtained a decree against their father, C., for possession of their share of ancestral property. In execution they 'dispossessed' D., who held under a mortgage from C. On an application under s. 230, Act VIII of 1859, *held*, upon proof of such holding, the Court ought to have gone into the question of the validity of the mortgage against A. and B. **JADUNATH SING v. KALIPRASAD**, vi Ap. 55

3. — *Dispossession—Superintendence of High Court.*] Whether or not an appeal lies from the decision of a lower Court, rejecting an application by a party other than a defendant, under s. 230 of Act VIII of 1859, disputing the right of the decree-holder to dispossess him, the High Court may, under the 15th section of the Charter, compel the lower Court to exercise its jurisdiction. *Goluk-narain Dutt v. Bistooprea Dossee* referred to and questioned. Planting a bamboo and making proclamation to the occupants of an estate that it has been adjudged to some other, is sufficient dispossession of a landlord to warrant him in applying to the Court under s. 230. **COLLECTOR OF BOGRA v. KRISHNA INDRA ROY**, [ii A. C. 301

4. — *Separate adverse claims—Dispossession—Procedure.*] Four persons made separate applications to the Court, under s. 230, Act VIII of 1859, alleging that the defendant having obtained a decree against Government for possession of fisheries in a spit to which

CIVIL PROCEDURE CODE, s. 230—continued.

they were no parties, had in execution dispossessed them of fisheries of which they were severally in possession. On enquiry it appeared that each and several of the four applicants claimed possession of the same portions of the fisheries. The lower Court holding that it was impossible for each of several parties setting up adverse claim to the same property to show that it had been *bonâ fide* in his possession, and that he had been dispossessed from it, referred all parties to a regular suit. *Held*, that the Judge should have tried each case by itself as between the applicant and the decree-holder. **SARADAMAYI CHOWDHRAIN v. NABIN CHANDRA ROY CHOWDHRY**, [ii A. C. 333

5. — *Decree under Act XIV of 1859, s. 15.*] A. had been dispossessed of certain land in execution of a decree which B. had obtained in a suit against C. under s. 15, Act XIV of 1859. A. applied under s. 230, Act VIII of 1859, to recover the land. *Held*, the decree obtained by B. was a decree within the meaning of s. 230 of Act VIII of 1859, and therefore A. had rightly applied under that section. **BRAMHA MAYI DEBI v. BARKUT SIRDAR** - - - - - iv F. B. 94

6. — *Evidence—Title—Possession.*] On an application under s. 230, Act VIII of 1859, in the investigation of the matter in dispute, the Court may go into the question of title. It is open to the applicant to give evidence of title beyond mere possession, and the decree-holder may prove his title to the property. **RADHA PYARI DEBI v. NABIN CHANDRA CHOWDHRY** - - - - - v F. B. 708

7. — *Application—Regular suit—Title—Possession.*] An application under s. 230 of Act VIII of 1859 should be registered and numbered in the register of suits as a plaint in a regular suit, and the Court is bound to determine, upon regular issues, as in an ordinary suit, both the right and title as well as the possession of the applicant. **YUSAN KHATUN v. RAMNATH SEN** - - - vii Ap. 26

8. — *Possession—Title—Limitation.*] The defendant purchased in 1856 from the Official Assignee certain property belonging to one D. In 1867 he brought a suit against the heirs of D. for possession of the property purchased; he obtained a decree in May, 1869, under which he obtained possession in May, 1870. In June, 1870, the plaintiff filed a petition under s. 230, Act VIII of 1859, alleging that he had purchased the property claimed from the heirs of D. in 1864, and had been in possession until he was ousted by the defendant, and that he was not a party to the suit brought by the defendant in 1867. *Held*, that the title of the defendant was barred, more than twelve years having elapsed from the date of his purchase; and that the plaintiff was entitled, on mere proof of *bonâ fide* possession, and that he was not a party to the suit by the defendant in 1867, to put the defendant to proof of his own title, and, on the defendant's failing to prove his

CIVIL PROCEDURE CODE, s. 230—continued.

title, to be restored to possession. *BRINDABUN CHUNDER ROY v. TARACHAND BANDOPADHAY*, [xi 237]

—, s. 230, APPLICATION UNDER.

See STAMP.

—, s. 230, ORDER REJECTING APPLICATION UNDER.

See APPEAL.

—, s. 233—*Execution of warrant against moveable property—Attachment—Removing locks.*] Under s. 233, Act VIII of 1859, a Nazir, authorized to execute a warrant by attachment of moveable property, has power to remove locks put by the judgment-debtor on the doors of godowns or other places where his property is stored, and put his own locks thereon for the purpose of attachment and safe custody of the property. *SODAMINI DASI v. JAGESWAR SUR* - - - v Ap 27.

—, s. 236.

See ATTACHMENT.

SALE IN EXECUTION OF DECREE.

—, s. 239—*Service of prohibitory order—Sufficiency of.*] Where service of the prohibitory order was effected by affixing it to the wall of the dwelling-house of the person on whom it was intended to serve it, *held*, it was not a sufficient service under s. 239. It ought to have been served by delivery or by registered letter. *GOBIND CHUNDER DUTT v. KHERODE CHUNDER MITTER* - - - x Ap. 12

2. — *Attachment—Private alienation.*] Where an attachment of land is made by written order under s. 235 of Act VIII of 1859, the conditions in s. 239 must be fulfilled in order to render any private alienation of the property attached null and void under s. 240. *INDRA CHANDRA BABU v. AGRA AND MASTERMAN'S BANK* - - - i S. N. xx

—, s. 240.

See ATTACHMENT.

—, s. 243.

See APPEAL.

SALE IN EXECUTION OF DECREE.

2. — *Appointment of manager—Ground for rejecting application.*] The fact of the judgment-debtor's possessing properties other than the one attached, is no ground for rejecting an application under s. 243, Act VIII of 1859, for the appointment of a manager. *DEBKUMARI BIBEE v. RAM LALL MOOKERJEE* - - - iii Ap. 107

3. — *Inquiry as to value of property—Rules of High Court, 11th July, 1871.*] Where property of a judgment-debtor is already in charge of a manager duly appointed, and it is proposed to put other properties belonging to the debtor also under his charge, an attachment of the property is necessary before appointing the manager to take charge of them. The rule of Court of 11th July, 1871, does not limit the time for which a manager should be appointed to two years. The Judge as to that should exercise a proper discretion. *BANWARI LAL SAHU v. GIRDHARI SING* - viii Ap. 23

CIVIL PROCEDURE CODE, s. 246.

See ONUS PROBANDI.

2. — *Claim—Suit for reversal of order under s. 246.*] A party against whom an order has been obtained under s. 246, Act VIII of 1859, must, if he sue for its reversal, assert substantially the same right as that which has been contended for in the execution. *COLVIN COWIE v. ELIAS* - - - ii A. C. 212

3. — *Proof of possession—Title—Act VIII of 1859, s. 15.*] In a suit brought under s. 246, Act VIII of 1859, for establishment of right,—*held*, that the plaintiff's failure to prove his possession at the time of the institution of the suit is not sufficient for its dismissal. The question of title should be tried according to the meaning of that section. S. 246, Act VIII of 1859, distinguished from s. 15. *MATHURA PANDEY v. RAM RUCHA TEWARRIE* - - - iii A. C. 108

4. — *Claim—Execution of decree—Attachment—Fractional share of property.*] In execution of a decree against A., "the moiety or half-share of A." in certain lands is attached. M. files a petition under s. 246 of Act VIII of 1859, in which he admits that A. has a one-eighth share in the lands, but alleged that A. has only a one-eighth share, and that a two-eighths share belongs to himself, M. *Held*, that this was a claim to property attached in execution under s. 246 of Act VIII of 1859, which the Court under that section is bound to investigate and adjudicate upon. In execution of a decree against A., the "right, title, and interest of A." in certain lands are attached. M. files a petition under s. 246 of Act VIII of 1859, in which he admits that A. has a one-twentieth share, but alleges that A. is entitled to no more than a one-twentieth share; and that he, M., has a two-twentieth share. *Held*, that, assuming the attachment of A.'s eighth title and interest to be an irregular attachment under s. 213, M., whose lands were included within such attachment, was entitled to come in and claim his own two-twentieths share, and the Court was bound to investigate his claim under s. 246 of Act VIII of 1859. *Held* also, in both cases, that M. was entitled to have the attachment removed so far as his share was concerned. *Held* also (*per* PHEAR, J.), that, in the first case, M. was entitled to have the attachment removed so far as regards the margin in excess of A.'s actual share; and that in the second case he was entitled to have the whole attachment discharged. *COWAR RAJKUMAR ROY v. KADAMBINI DEBI* - - - iv F. B. 175

5. — *Act XXIII of 1861, s. 11—Appeal—Third party—Execution of decree.*] A. obtained a decree against B., in her representative character, for a debt contracted by her mother. The decree declared that execution should be taken out against the property of the mother, and not against any part of her (the mother's) deceased husband's estate. In execution, A. attached and put up to sale certain property as belonging to the mother.

CIVIL PROCEDURE CODE, s. 246—continued.

B. objected to the sale, alleging that the property was not her mother's, but was inherited by her from her father. The Munsif disallowed her objection on the ground that only the right, title, and interest of the defendant's mother was put up for sale. On appeal the Judge set aside the Munsif's order. *Held* that, for the purposes of her objection, *B.* was a third party unconnected with the decree, and that her objection should have been disposed of under s. 246 of Act VIII of 1859. S. 11 of Act XXIII of 1861 did not apply and there was no appeal. **HARIS CHANDRA GUPTO v. SHASHI MALA GUPTI** - - vi 721

6. — *Right of suit under — Declaratory suit.* A plaintiff stated that the plaintiff was proprietor of certain land which was let to one *M.*, and that whilst *M.* was in possession, and before the expiration of his tenancy, a creditor took out execution against him and put up for sale the future profits of the property (*wasilat*) which would come into the hands of *M.*, alleging that *M.*'s interest was not that of a tenant, but of a usufructuary mortgagee. The plaintiff thereupon put in a claim under s. 246, Act VIII of 1859, but his claim was rejected; and he then brought a suit under that section for a declaration that *M.*'s interest in the property was that of a tenant, and not that of a usufructuary mortgagee. It appeared that, on the termination of *M.*'s tenancy, the plaintiff let the land to another person. *Held*, that the suit would not lie. **AMJAD ALI v. KUNKU SHAW** - ix Ap. 28

7. — *Appeal—Act XXIII of 1861, s. 11—Execution of decree.* In execution of his decree, the decree-holder attached certain property as being that of the judgment-debtor. On this *R.*, the son of the judgment-debtor, intervened, stating that he held possession of the property in his own right, and did not inherit it as any part of his mother's assets. The Munsif admitted his claim on the ground that the property was not that of the judgment-debtor. *Held*, the order was one under s. 246, and no appeal would lie to the Judge. **IN RE RAINEY** - - - vi 725 note

8. — *Limitation — Possession — Claim.* In execution of a decree against *A.*, certain property was sold in 1868. During the proceedings which led to that decree, *B.*, the wife of *A.*, had preferred a claim to the property under s. 246, on the ground that it was her stridhun, and that she had always been in possession of it. Her claim was rejected in 1866; but she remained in possession. *Held*, a suit by *B.* to establish her title to the land was not barred by the limitation provided by s. 246, though brought more than a year after her claim was refused, since she was at the time in possession and had remained afterwards in possession of the property. **LAKHI PRYA DEBI v. KHYRULLA KAZI**, [vii 228 note

9. — On attachment of certain property, plaintiff and defendants preferred their respective claims thereto. The plaintiffs' claim

CIVIL PROCEDURE CODE, s. 246—continued.

was disallowed, but the defendants' claim was allowed. The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was, that the suit was barred by lapse of time under s. 246, Act VIII of 1859. *Held*, s. 246 did not apply to such a suit. **DURGARAM ROY v. RAJA NARISING DEB** - ii A. C. 264

10. — *Limitation.* Certain lands were attached under a decree against the ancestor of the plaintiffs; but on the intervention of the defendant under s. 246, Act VIII of 1859, they were released to him. *Held*, that was not an order made between plaintiffs and defendant, such as to make it necessary for the former to sue for declaration of title within one year. **NITTA KOLITA v. BISHUNRAM KOLITA** - - - - - ii Ap. 49

11. — *Right of one decree-holder against another—Suit for declaration of prior lien.* Two several judgment-creditors attached certain property, which was released upon the claim of a third party, under s. 246 of Act VIII of 1859. One of them sued the successful claimant, and obtained a decree declaring the property in dispute to belong to the judgment-debtor, and thereupon caused the property to be sold, and became the purchaser thereof. Thereupon an assignee of the other judgment-creditor sued him, alleging an earlier lien, and praying a sale in satisfaction thereof. The defence set up was that, as the plaintiff did not come into Court to set aside the order under s. 246 within a year from the date thereof, he was barred from bringing the present suit. *Held*, that the omission to bring a separate suit for that purpose did not bar him from obtaining a declaration of his prior lien. **CHINTAMANI SEN v. ISWAR CHANDRA** [iii Ap. 122

12. — *Limitation — Suit to avoid sale in execution of decrees of Small Cause Court passed without jurisdiction.* *A.* obtained a money-decree upon a bond in a Small Cause Court against *B.*, by which it was declared that certain landed property hypothecated by the bond was to be primarily liable for the debt. The decree was transferred to the Court of the Sudder Ameen of the same district, the property was put up for sale, and it was purchased by *C.* Prior to sale, *B.* alienated the property to *D.*, who, after sale, preferred his claim to it under s. 246 of Act VIII of 1859, which was disallowed. More than a year after this *D.* brought this suit against *C.*, to recover possession. In special appeal it was *held*, that the decree of the Small Cause Court being on the face of it without jurisdiction, the suit was not barred, and the case was remanded, to be tried on the merits. **LALA GANDAR LAL v. HABIBANNISSA** vii 235

13. — *Claim—Limitation.* Property attached was, on the claim of a third party, released by the Court without proceeding under the provisions of s. 246, Act VIII of

CIVIL PROCEDURE CODE, s. 246—continued.

1859. The attaching creditor sued more than a year afterwards for a declaration that the property belonged to the judgment-debtor. *Held*, that the suit was not barred. **JAGGA-BANDHU BOSE v. SACHYI BIBI** - viii Ap. 39

14. — *Refusal to stay sale in execution of decree—Limitation.* Certain lands having been attached in execution of a decree obtained by A. against B., C. intervened under s. 246, Act VIII of 1859, claiming their release on the ground that before the attachment they had been conveyed to him by B. under a deed of sale; and he prayed that the execution-sale might be stayed to enable him to put in the deed after having it registered. The Court, however, refused to stay the sale, and the lands were sold in execution. More than a year from the date of the Court's refusal to stay the sale, C. sued to establish his right to the lands. *Held*, that the suit was not barred by limitation under s. 246, Act VIII of 1859, since the refusal of the Court to postpone the sale was not an order under that section, but was a mere refusal to order a postponement under s. 247. **SAH MUKHUN LALL PANDAY v. SAH KOONDUN LALL** - - - xv P. C. 228

—, s. 249—*Part of an estate.* The 'part of an estate,' in s. 249, Act VIII of 1859, means the aliquot part of an estate. **KALLY-PROSONNO BOSE v. DINONATH MULLICK** xi 56

—, s. 254.

See SALE IN EXECUTION OF DECREE.

—, s. 257—*Letters Patent, 1865, ss. 15 and 36.* Ss. 15 and 36 of the Letters Patent of the High Court must be treated as qualifying s. 257 of Act VIII of 1859. **ROY NANDIPAT MAHATA v. URQUHART** - - iv A. C. 181

—, s. 257, ORDER UNDER.

See SPECIAL APPEAL.

—, s. 258—*Setting aside sale in execution of decree—Refund of purchase-money—Right, title, and interest.* S. 258, Act VIII of 1859, only applies to cases where a sale of immovable property has been set aside under circumstances which would, under Act VIII of 1859, authorize such a proceeding. The fact that the party whose right, title, and interest were sold had no interest at all, or less than was supposed, is no ground for setting aside the sale. **RAJIB LOCHUN v. BIMALAMONI DARI** - - - ii A. C. 83

2. — *Right of purchaser to recover purchase-money—Sale in execution of decree—Irregularity in sale.* Although a purchaser may, under s. 258 of Act VIII of 1859, recover his purchase-money, it is only when the sale is set aside for irregularity under s. 257. **SOWDAMINI CHOWDHURANI v. KRISHNA KISHOR PODDAR** - - - - - iv F. B. 11

3. — *Suit for refund of purchase-money for property bought at auction-sale in execution of decree.* The plaintiff purchased at an auction-sale, in execution of a decree, the right, title, and interest of a judgment-debtor in certain property. The sale was confirmed

CIVIL PROCEDURE CODE, s. 258—continued.

on November 30, 1866. On proceeding to take possession he was opposed by the defendant, who asserted that he was in possession of the property, and that it was his. In a suit under s. 258, Act VIII of 1859, for a refund of the purchase-money, the sale still remaining uncanceled,—*held*, that the suit must be dismissed; that s. 258 of Act VIII of 1859 only applied to cases where the auction-sale had been cancelled; that the proper course for the plaintiff to have pursued was to have brought a suit under s. 269 of Act VIII of 1859 for a declaration of the judgment-debtor's right, title, and interest in the property. **BISSESWAR PANDAY v. BHAGWAN DOSS**

[iii A. C. 301

—, s. 260—*Sale in execution of decree—Certified purchaser—Benami purchase.* A talook in possession of a mortgagee was put up for sale under an execution against the mortgagor, and was bought by A. in his own name, but benami for the mortgagee. A. obtained a certificate as purchaser, and was put formally in possession, the mortgagee remaining in actual possession. In a suit by A. in ejectment to recover possession of the property purchased, *held* (dissentients L. S. JACKSON, J.), that the defendant was debarred not only by s. 260, but by the general provisions of the Act, from pleading that the plaintiff, the certified purchaser, purchased not on his own behalf but benami for him, the defendant. Such defendant must show a transfer of title to him from the purchaser, in whom alone, under the certificate, the title of the judgment-debtor has vested. The object of s. 260 is to prevent any enquiry between the purchaser *de facto* and any person on whose behalf he is alleged to have purchased. *Held* on appeal (reversing the decision of the High Court), that s. 260 of Act VIII of 1859 is to be construed strictly, and that no suit would lie by A. against the mortgagee to redeem. **BIHANS KUNWAR v. BEHARI LAL**,

[iii F. B. 15, S. C. on appeal, x P. C. 159

2. — *Suit for declaration that the name of certified purchaser was inserted fraudulently.* S. 260, Act VIII of 1859, is no bar to a suit for a declaration that the name of the certified purchaser was inserted in the certificate of sale fraudulently and without the consent of the real purchaser. **GOMIAH v. TAFFUZZUL HOSSEIN** - iv Ap. 32

3. — *Purchase by member of joint family in his own name with joint funds.* The provisions of s. 260, Act VIII of 1859, apply to ordinary benami purchases at execution sales, but do not affect purchases of property by one member of a joint Hindu family in his own name, but with the joint funds. **BODH SINGH DOODHOORIA v. GUNESH CHANDRA SEN**,

[xii P. C. 317

—, s. 260—*Dispossession in execution of decree against another party.* A person dispossessed of property in execution of a decree against another person, and claiming to be entitled to possession, is not bound to proceed under s. 269

CIVIL PROCEDURE CODE, s. 269—continued.

of Act VIII of 1859. **PROTAP CHUNDER CHOWDHRY v. BROJOLAL SHAHA** - Sup. Vol. 638
—, ss. 270, 271.

See APPEAL.

ATTACHMENT.

—, s. 271—*Execution of decree—Attachment by mortgage—Surplus proceeds.* Pending a suit against A. and N. upon a bill of exchange, A. deposited with the plaintiff as security for the amount due upon the bill the title-deeds of property belonging jointly to N. and himself. The plaintiff subsequently got a decree for the amount due upon the bill. Thereafter one S., in execution of a decree against A. and N., attached certain property of theirs, including the mortgaged property, and caused it to be sold; and the surplus sale proceeds, after satisfaction of S.'s decree, were paid into Court to the credit of his suit. Intermediately between this attachment and sale, the plaintiff also attached under his decree on the bill of exchange the mortgaged and other property of A. and N., and after the plaintiff's attachment, N. ratified the equitable mortgage made by A. The sale under S.'s attachment having taken place, the plaintiff sued A. and N. and the purchasers at such sale of the mortgaged property for foreclosure or sale thereof, and obtained a decree declaring that he had a good equitable mortgage of A.'s share in the joint property, and for an account and sale in default of payment; and the plaintiff subsequently, on 26th May, 1873, got an order under his decree upon the bill of exchange for payment to him of the surplus sale proceeds lodged in Court to the credit of S.'s suit, and for sale of certain of the properties, other than the mortgaged property, which he had attached. Under this order the money was paid out to the plaintiff, and the properties were advertised for sale. **MACPHERSON, J.**, having, on an application by A., set aside this order, and directed that the plaintiff should refund into Court the money paid out to him, and that the sale should be stayed, the Court on appeal refused to set aside the order of the 26th May, but made the plaintiff undertake to pay into Court the mortgage-money with interest if the same should be received by him from the defendants in the mortgage suit. **BANK OF BENGAL v. NUNDOLAL DOSS**, xii 509

2. — *Property sold subject to mortgage.* The proviso of s. 271 of Act VIII of 1859, is intended to apply to a case where the property is actually sold subject to a mortgage, and where the transaction is such that the purchaser is buying only the equity of redemption; it does not apply to a case where there is merely the right by law in the mortgagee to enforce his mortgage against the purchaser. **FAKEER BUX v. CHUTTURDHARE CHOWDHRY**, [xii 513 note

—, s. 272—*Improper means—Decree obtained on plaint insufficiently stamped.* A. obtained a decree under s. 53, Act XX of 1866, upon a registered bond, against B., one of the original obligors, and C., the representative

CIVIL PROCEDURE CODE, s. 272—continued.

of another obligor, who had died before the institution of the suit. A. sued out execution, and caused certain property of B. to be attached. D., a judgment-creditor of B., sued out execution of his decree, which was of a subsequent date to the decree of A., and caused the same property to be attached. Subsequently D. applied to the Munsif, under s. 272, Act VIII of 1859, that he might be first paid from the proceeds of sale, as the decree of A. had been obtained by fraud and improper means. The Munsif held, as the decree was obtained upon a plaint whereupon was a stamp of one-fourth of the value it ought to bear, it was obtained by "improper means." On the application of A. to the High Court for an order that the order of the Munsif be set aside as passed without jurisdiction,—*held*, that a mere error in the procedure did not come within the scope of the words "improper means" in s. 272, Act VIII of 1859, and that there must be some misconduct of the decree-holder to invalidate his decree under that section. **BRAJA NATH SHAHA v. KANAYI LAL SEN**, [vi 174

—, s. 273.

See ACT XXIII OF 1861, s. 8.

2. — *Judgment-debtor—Application for discharge—Salary.* A judgment-debtor in receipt of a monthly stipend is not entitled to obtain a discharge under s. 273 of Act VIII of 1859, unless he submits to place that stipend at the disposal of the Court that provision may be made for satisfaction of the debt. **ABDUTDOWLA REZA HOSSEIN KHAN v. HAMISADOWLAH ABED KHAN** - - - vi 576
But see **COOMBE v. CAW** - - - xiii 263

—, s. 276.

See SUBSISTENCE MONEY.

—, s. 278.

See SUBSISTENCE MONEY.

—, s. 280.

See ACT XXIII OF 1861, s. 8.

—, s. 281—*Application for discharge—'Bad faith.'* When an insolvent was brought up for the purpose of obtaining his discharge,—*held*, that the 'bad faith' mentioned in s. 281, Act VIII of 1859, must be in respect of the debt for which he was imprisoned, and with regard to which the application was made. **ORIENTAL BANK v. MANIMADHAB SEN**, [iii Ap. 14

2. — 'Bad faith' in s. 281, Act VIII of 1859, means bad faith not only in respect of the application, but includes bad faith on previous occasions. **SMITH v. BOGGS** - v Ap. 23

3. — 'Bad faith' in s. 281 of Act VIII of 1859 refers only to bad faith in respect of an application under that section. **IN RE GURUDAS BOSE** - - - vii Ap. 23

4. — In an application for discharge under s. 281, Act VIII of 1859, the 'bad faith' must be bad faith in respect of the application. **BUTLER v. LLOYD** - - - xii Ap. 12

5. — *Plaintiff—Imprisonment for costs of suit.* S. 281 of Act VIII of 1859 does not

CIVIL PROCEDURE CODE, s. 281—continued.

apply to a plaintiff in custody for the costs of a suit. *IN RE EDULJEE RUTTONJEE* x Ap. 27

6. — *Application for discharge—Omission to state in petition where property would be found.*] In an application for discharge under ss. 280 and 281 of Act VIII of 1859, the properties entered in the defendant's schedule consisted entirely of moveables, and the petition did not state the place or places where such property would be found. *Held*, it was a substantial defect in the application, which was refused. *WATKINS v. RAJAH ROHEENEE BUL-LUB* — — — — — x Ap. 11

7. — *Cost of deposition of defendant.*] Where the plaintiff, in order to make the proof referred to in s. 281, Act VIII of 1859, chooses to examine the defendant, he must pay for the oath and the cost of reducing the deposition of the witness to writing. It would be otherwise under s. 8, Act XXIII of 1861, in which case the fee is demandable from the applicant. *EDMOND v. NIERSES*, viii Ap. 23

—, s. 284.

See EXECUTION OF DECREE.

2. — *Cooch Behar—Court of the Dewan Ahilkar—Jurisdiction.*] It not being shown that the Court of Dewan Ahilkar of Cooch Behar is a Court within the British territories, or a Court established by the Governor-General in a foreign State,—*held*, the Judge of Rajshahye had no jurisdiction, under s. 284, Act VIII of 1859, to execute a decree of that Court. *JADAB CHANDRA TOI PARAMANIK v. DINANATH DAS* — — — — — iv A. C. 134

—, s. 286—*Small Cause Court, Mofussil—Transfer of execution proceedings—Act XI of 1865, ss. 19 and 20.*] The provisions of s. 286, Act VIII of 1859, apply to Small Cause Courts in the mofussil; accordingly a Small Cause Court may send its decree to another Court for execution if there be not sufficient property within its own jurisdiction to satisfy the decree. It may send the decree to any other Court in the same district which the applicant may indicate; but if execution be sought in another district, the decree must be sent to the principal Court of original jurisdiction in that district. *ANONYMOUS CASE* — Sup. Vol. 886

—, ss. 304—309.

See PAUPER SUIT.

—, ss. 316—324.

See ARBITRATION.

—, s. 325.

See APPEAL.

ARBITRATION.

—, s. 327.

See APPEAL.

ARBITRATION.

COSTS.

SMALL CAUSE COURT, MOFUSSIL,

—, s. 333.

See APPEAL.

—, s. 337—*Suit on bond—Appeal by one of several defendants.*] In a suit for recovery of

CIVIL PROCEDURE CODE, s. 337—continued.

rupees 300 due on a bond, the defendants denied the execution of the bond and the receipt of the consideration. The Court of first instance decreed the suit, which, on appeal by one of the defendants, was dismissed. *Held*, that, under s. 337, Act VIII of 1859, the Judge had no power, on appeal by one defendant, to set aside a decree against the other. *SHIRAM GHATAK v. BRAJAMOHAN GHOSAL*, [iii Ap. 41

2. — *Appeal by one party—Reversal of decree against all.*] Power of the Court of appeal, under s. 337 of Act VIII of 1859, to reverse the whole of the decree of the Court below upon the appeal of one only of the parties against whom the decree was passed. *JADUMANI DAS v. FADU BIBI* — vii Ap. 28

3. — *Intervenor—Parties—Appeal—Decree set aside on appeal by one defendant.*] *D. C. S.*, the zemindar, brought a suit against *B.*, a ryot, for recovery of arrears of rent, valued below Rs. 100. *B.* set up in defence that the rent was not payable to *D. C. S.*, but to *N. C. A.*, the mukurraridar. *N. C. A.*, who claimed under a mukurrari title, and alleged that he was in receipt of the rents from the ryots, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by *N. C. A.*, which was heard and decided by the Subordinate Judge on reference by the District Judge, the decree of the first Court was reversed, and the suit dismissed. On appeal to the High Court, *held*, that *N. C. A.* was properly made a defendant to the suit, and that he could prefer an appeal from the decree of the Court of first instance, and that the Court of appeal could, on his appeal, set aside the whole decree. *DAYAL CHAND SAHOY v. NABIN CHANDRA ADHIKARI* — — — — — viii 180

—, s. 338.

See EXECUTION OF DECREE.

—, s. 341—*Registration of petition of appeal.*] The registration of a petition of appeal under s. 341, Act VIII of 1859, is a proceeding of a purely ministerial character. *JAFFER HOSSEIN v. MAHOMED AMIN*, [iv Ap. 103

—, s. 342—*Appeal from order of Commissioner of Insolvent Court.*] S. 342 of Act VIII of 1859 does not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. *IN THE MATTER OF RAMSEBAK MISSEB* — — — — — v 179

2. — *Security for costs of appeal.*] Circumstances under which an order may be made requiring security for costs of appeal to be deposited under s. 342 of Act VIII of 1859. *BAMASUNDARI DAS v. RAMNARAYAN MITTER*, [vii Ap. 59

—, s. 347.

See APPEAL.

—, s. 348.

See APPEAL.

CIVIL PROCEDURE CODE, s. 350.*See* APPELLATE COURT.

—, s. 351.

See APPELLATE COURT.
REMAND.

—, s. 352.

See REMAND.

—, s. 354.

See APPELLATE COURT.

—, s. 355.

See APPELLATE COURT.

2. — *Discovery of fresh evidence — Application for review.*] The High Court decided a case irrespective of certain documents brought forward by a party at the hearing of the appeal, and afterwards rejected an application for a review of that judgment. In an application to the Privy Council for special leave to bring in those documents,—*held*, that further evidence ought not to be admitted under s. 355, Act VIII of 1859; that there was great danger in the Court of ultimate appeal lightly introducing evidence which had not been under the consideration of the Courts below, and which the parties had had no means of testing. **GOBIND SUNDARI DEBIA v. JAGADAMBA DEBIA**,

[iii P. C. 25]

3. — *Additional Evidence — Appellate Court.*] In a suit for possession of certain lands under a howla tenure, khas possession of which for some generations was alleged, no special documentary title was set up in the plaint; but one of the plaintiffs in his deposition referred the title to a particular patta, which he said had existed, and had been lost in the time of his grandfather. Two of the defendants were the zemindars of the talook in which the howla tenure was said to exist, and had transferred their proprietary right to the other two defendants. The zemindars did not defend the suit, and were not examined in the Court of first instance. The lower Appellate Court "considered it necessary, for the proper decision of the case," to examine the zemindars, and relying mainly on their evidence, reversed the decision of the Munsif, and gave a decree in favor of the plaintiff. *Held* on appeal, that the lower Appellate Court had sufficiently recorded its reasons within the meaning of s. 355 of Act VIII of 1859 for requiring the additional evidence; that it was right in so doing; and that although no special title had been set up in the plaint, the decree which was given on the evidence in favor of the plaintiffs could not be reversed in special appeal. **RADHANATH DHUBI v. RAMGOBIND PAL** — — iii A. C. 218

—, s. 359—*Judgment of lower Appellate Court — Improper record of.*] The Judge of the lower Appellate Court not having recorded his judgment as required by s. 359 of Act VIII of 1859, the case was sent back to the lower Court for the Judge to state the points for decision, and to give his decision upon those points consecutively. **TATUR KHAWAS v. JAGANNATH PRASAD** — — — vii Ap. 14

CIVIL PROCEDURE CODE, s. 359—continued.

2. — *Judgment written by Judge, and pronounced in Court by his successor.*] A Subordinate Judge wrote out his judgment in a case, which had been heard before him, after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the succeeding Subordinate Judge. An objection being taken in special appeal that the judgment read out by the succeeding Subordinate Judge was not a judgment according to Act VIII of 1859,—*held*, that the judgment was valid. **PARBATTI v. MUSST. BEIKUN**,

[viii Ap. 98]

—, s. 365—*Witness absconding—Right of appeal—Fine for avoiding service of summons.*] By words of s. 365 of Act VIII of 1859, the Legislature must have intended to give the person aggrieved by any order of a Civil Court imposing a fine on him as a punishment for keeping out of the way in order to avoid service of summons to attend as a witness, the right of appeal to the High Court, whether the order be strictly referable to s. 160 of that Act or not. **IN RE GAJADHAR PRASAD NARAYAN SINGH** — — — i A. C. 187

—, s. 372.

See SPECIAL APPEAL.

2. — *Decision — Interpretation of — Appeal.*] By the word 'decision' in s. 372 of Act VIII of 1859, is meant the decree and judgment taken together, and not simply the decree unexplained by the judgment. **INDRAJIT KOONWARI v. CHOKOWRI SAHU**,

[Sup. Vol. 1]

—, ss. 376—378.

See REVIEW.

—, s. 387.

See SPECIAL APPEAL.**CLAIM.***See* CIVIL PROCEDURE CODE, s. 246.**CLAIM UNDER PENDING AWARD.***See* ATTACHMENT.**CLAIMS, PROOF OF.***See* INSOLVENCY.

INSOLVENT ACT, s. 40; s. 42.

CLAIMS, SEPARATION OF.*See* CO-SHARERS.**COLLATERAL SECURITY.***See* MERGER.**COLLECTOR, JURISDICTION OF.***See* EXECUTION OF DECREE.

JURISDICTION OF REVENUE COURT.

MEASUREMENT OF LANDS.

PARTITION.

RES JUDICATA.

COLLECTOR, ORDER OF, AS TO STANDARD OF MEASUREMENT.*See* APPEAL.**COLLECTOR, ORDER OF, UNDER ACT X OF 1859, s. 23.***See* RES JUDICATA.

COLLECTOR, POWER OF, TO SELL FOR ARREARS OF RENT.

See BENG. ACT IV OF 1870.

COLLECTOR, POWER OF, TO WITHDRAW OR TRANSFER SUITS.

See BENG. ACT VI OF 1862, s. 20.

COMMISSION—Evidence, admissibility of—Act VIII of 1859, ss. 177, 176, and 179—Powers of High Court to issue commission.] A commission for the examination of a witness at Mandalay can only issue from the High Court. The consent of parties is not requisite to the admissibility of evidence taken under such commission, if the examination have been upon oath or affirmation. AGA MAHOMED JAFFER TEHARANI v. MIRZA NAZIRULAH - - - ii A. C. 73

2. — *Difference between arbitrators and commissioners.]* Commissioners appointed by the Court are officers of the Court, and act by a majority; therefore, where two of the commissioners were agreed, *held*, that they had power to make a valid return of the commission, notwithstanding the dissent of the third. RAJENDRA MATILAL v. RAMNARAIN MATILAL, [iii Ap. 3

3. — *Evidence—Examination de bene esse—Act VIII of 1859, ss. 175, 179.]* A *de bene esse* examination of a witness about to leave the jurisdiction of the Court must be taken by the Court, unless the parties consent to the evidence being taken under a commission. EDWARDS v. MULLER - - - v 252

4. — *Examination under commission—Practice—Counsel.]* The examination of witnesses under a commission is of the same nature as an examination in open Court, and should be conducted by counsel and not by attorneys. The return should show on the face of it that the oath was administered to the commissioner as well as to the interpreter. FRANKRISHNA CHANDRA v. BISSONATH CHANDRA - - - viii Ap. 101

5. — *Act VIII of 1859, s. 179—Evidence in record—Use by one party of evidence under a commission issued at the instance of another party.]* The evidence of the defendant taken under a commission was allowed to be read on the plaintiff's behalf without the deposition being put in as part of the plaintiff's case as being part of the record under s. 179, Act VIII of 1859. DWARKANATH DUTT v. GUNGA DAYI, [vii Ap. 102

6. — *Obligation to issue.]* As to the obligation on the Court to issue a commission, see *per* AINSLIE, J., in HARIDAS BAIKAKH v. MIR MOAZAM HOSEIN - - - viii Ap. 16

7. — *Insolvent Court—Charge by Judicial Officer for executing commission—Taxation of costs—Counsel's fees—Practice.]* In the course of insolvency proceedings the Official Assignee obtained a *rule nisi* calling on one D., alleged to have been gomasta to the insolvent, to show cause why he should not hand over to the Official Assignee certain goods and monies claimed as part of the insolvent's

COMMISSION—continued.

estate. D. applied for and obtained a commission to issue to the Judge of Agra as commissioner to examine witnesses in his behalf, but the Judge of Agra refused to execute the commission without being paid his fees, which D. accordingly paid. On the hearing of the rule, it was discharged with costs, including costs of the commission. On the taxation of the bill of costs as between party and party, the taxing officer disallowed the sum paid to the Judge of Agra, and allowed certain fees and additional fees to the counsel for D. Exceptions were filed by both parties, and eventually the exceptions came on for argument. *Held*, the Judge of Agra was not bound to execute a commission issuing from the Insolvent Court without making a charge for so doing: the amount of the charge is in the discretion of the taxing officer. As to allowing fees to the counsel for D., the taxing officer should consider what was fair and reasonable, regard being had to the nature and circumstances of the case: they are not necessarily to be measured by the amount allowed by the Official Assignee for his counsel. IN RE GHASERAM - - - xii Ap. 4

COMMISSION TO MOORTEARS, PRACTICE OF GIVING.

See PLEADER.

COMMISSIONER OF INSOLVENT COURT, APPEAL FROM.

See CIVIL PROCEDURE CODE, s. 342.

COMMISSIONER OF INSOLVENT COURT, POWER OF.

See INSOLVENT ACT, s. 73.

COMMISSIONERS OF REVENUE AND CIRCUIT.] The law relating to Commissioners of Revenue and Circuit reviewed. IN RE PARBHU NARAYAN SINGH - - - iii A. C. 370

COMMON ASSEMBLY, RESPONSIBILITY OF MEMBERS OF.

See DAMAGES, SUIT FOR.

COMMON OBJECT.

See UNLAWFUL ASSEMBLY.

COMPANY.

See RAILWAY COMPANY.

2. — *Promissory notes, issue of—Power of directors.]* Where the articles of association of a limited company stated that the objects for which the company was established were for the purchase of the business of an hotel-keeper, confectioner, and provisioner, the future working and carrying on of the said business, and the doing of all such other things as were incidental or conducive to the attainments of the above objects, it was *held*, that the directors had powers to bind the company by the issue of negotiable securities in the ordinary course of business. Where a note, which had been taken by the company as a security from two judgment-debtors of the company, was endorsed by the company to a third party, and discounted by him, and was, on the due date, not having been taken up by the makers, renewed by the company,—*held*, that such negotiation of the

COMPANY—continued.

note by the company was within the ordinary course of the business of the company. Also *held* upon the facts, that the power of the company to issue negotiable securities was well exercised, and that the company had due notice of dishonour by the makers. **CHOONILALL SEAL v. SPENCE'S HOTEL COMPANY LIMITED** - - - - - i O. C. 14

3. — *Act X of 1866, s. 174 — Power of liquidators to compromise under sanction of the Court.*] Under s. 174 of the Indian Companies' Act, the Court has power to sanction compromises of calls, debts, and liabilities before the list of contributories has been settled, or the competence of the shareholders has been ascertained. The Privy Council will be reluctant to interfere with the discretion of Courts having jurisdiction to sanction a compromise by the liquidators of a company winding up under s. 174 of the Indian Companies' Act, where all the facts have been placed before the Court in India, and there is no reason to suppose that the proceedings for a compromise have been tainted with fraud. **BANK OF HINDUSTAN, CHINA, AND JAPAN v. THE EASTERN FINANCIAL ASSOCIATION**, [iii P. C. 8

4. — *Winding up—Petitioning creditor's costs.*] In an application by a creditor of a company to have it wound up under the superintendence of the Court, the Court will always be in favour of making an order for its being so wound up. The petitioning creditor is entitled to his costs as a first charge on the assets of the company, subject to any prior liens on the estate. **IN RE THE NAHOR HABI TEA COMPANY** - - - - - iii Ap. 11

5. — *Authority of agent—Corporation—Contract under seal—Companies' Clauses Consolidation Act, 8 and 9 Vict., c. 16, s. 97.*] The Scinde Railway Company was incorporated by 18 and 19 Vict., c. 115, for the purpose of making and maintaining railways in India, and for other purposes. This was repealed by 20 and 21 Vict., c. 160, which authorized the Company to extend their operations and also their capital, &c. This Act, by s. 3, declared the Companies' Clauses Consolidation Act, 1845, to be incorporated with it. By s. 18 the Company have a "seal for use in India in lieu of the common seal of the Company, and from time to time may vary and renew it, and make regulations for its use; and except as by this Act otherwise expressly provided, every document sealed with such seal, in conformity with such regulations, or in pursuance of any order of the directors, or of any authority given by the Company under their common seal, shall be as valid and effectual as if the common seal were affixed thereto." By s. 54, "the Company from time to time may appoint and remove such committees, persons, or person as the Company think fit to act on behalf of the Company in India or elsewhere, with respect to the making, maintaining, managing, working, and using of the railways and other works of

COMPANY—continued.

the Company, and the control and conduct of any of the affairs in India or elsewhere of the Company; and may delegate to any such committee, persons, and person respectively all or any of the powers of the Company and of the directors and officers thereof, which the Company thinks it expedient that such committee, persons, and person respectively should possess for the purposes of his or their respective appointment." In January, 1867, *E.* was the agent of the Company in India, and he entered, it was alleged on their behalf, into a contract with the plaintiffs for sixty sets of iron work for low-sided waggons. The plaintiffs' firm did not deal in iron work, and they had to get the goods manufactured for them in England. The Board of Directors were at the time supplying iron work for the Company. There was nothing to show that *E.* had been appointed under the provisions of s. 54 of the Act 20 and 21 Vict., c. 160, nor was there any evidence of the extent of his power or authority. A specification of the contract differed from it, in that it stated the waggons to be covered waggons, and not low-sided waggons. The contract was not made under seal of the Company, nor was the iron work, the subject of the contract, ever accepted by the Company. The defendants admitted that at the date of the alleged contract *E.* was the agent of the Company in India, but denied that his power extended to the making of such contract; they further stated that the contract, if entered into, had been afterwards cancelled. *Held* by PHEAR, J., that there was no evidence to show that *E.* had authority to make the contract. The contract was one which *E.* would have had power to make in writing only, under s. 97 of the Companies' Clauses Consolidation Act, had he been appointed under s. 54, 20 and 21 Vict., c. 160; but there was no proof of such appointment. *Held* on appeal that, assuming that *E.* had been appointed under s. 54, with powers as large as in the ordinary course could be conferred upon him under that section, the contract was not one by which acting as such agent, he had power to bind the Company. **STEWART v. SCINDE, PUNJAB, AND DELHI RAILWAY COMPANY** - - - - - v 195

6. — *Director of public company—Trustee—Appointment of partner or director to do work for company as solicitor.*] Although a director of a public company is always clothed with a fiduciary character in regard to any dealings with property of the company in his capacity of director, the rule that a trustee is not allowed to make a profit of his trust does not apply to such a director, *quid* director only. When a partner of one of the directors of a company did work for the directors as solicitor, and there was nothing to show that he had not been duly appointed by the directors, his claim in respect of such work was allowed. Distinction drawn between a trustee and a director of a public company. **IN THE MATTER OF THE PORT CANNING COMPANY LIMITED**, [vi 278

COMPANY—continued.

7. — *Transactions ultra vires—Bills of Exchange—Re-drafts.* A company was formed with the following objects, as stated in the Memorandum of Association, viz., "of securing valuable property in the new port and town of C. and its immediate vicinity; and of improving the property so acquired by building upon, letting, or selling it as may be deemed most advisable; and of undertaking the construction of public works calculated to facilitate trade, and also of constructing tramways, roads, docks, wharves, and jetties upon the land so to be acquired; and for all other purposes that may be essential or conducive to the attainment of, or connected with, the above objects." Soon after the establishment of the Company, the directors were induced to take a share in, and become liable for the cost of, a mill for husking rice, which it was intended to establish by a separate company; and a considerable sum was advanced out of the funds of the Company for the building of the mill and for machinery, &c. The undertaking failed, and the directors, to avoid losing the advances of the Company, resolved to take over the mill, and carry it on as the property of the Company. They, accordingly, purchased a large quantity of rice which was husked at the mill, and consigned to several firms in England. P. M. & Co. were appointed agents of the Company in Calcutta for the purpose of shipping the rice, under letters from the directors guaranteeing that the Company would pay at maturity any re-drafts which might be drawn on P. M. & Co. as their agents in respect of the shipments. Bills of exchange were drawn by P. M. & Co. on the firms to which the respective consignments were made, and these bills were sold in the ordinary course of business in Calcutta, P. M. & Co. realizing the proceeds for the benefit of the Company. Those bills were honored by the respective consignees. The rice was sold in England at a considerable loss, and re-drafts for the deficiency were drawn on P. M. & Co. or on the Company. The Company went into liquidation during these transactions. Some of these re-drafts had been accepted by the Company, and others merely registered by the liquidators as claims against the Company. Claims were now made on the Company by the drawees or endorsees of these re-drafts, but the liquidators declined to pay them, stating that the proceedings in connection with the consignments of rice were not authorized by the Memorandum and Articles of Association of the Company, and that therefore the Company was not liable for any losses in respect of such consignments. *Held*, that trading in rice was a transaction *ultra vires* of the Company; the directors therefore could not bind the Company, and the consignees could not recover in respect of the shipments. The Company was not liable on the re-drafts; it had no power to issue bills of exchange or to accept the re-drafts, and therefore the holders of those which had been in fact accepted were in no better position than

COMPANY—continued.

the holders of those which had not been accepted. **IN THE MATTER OF THE PORT CANNING COMPANY LIMITED** - - - vii 583

COMPANY, SUIT AGAINST.

See PLAINT.

COMPENSATION.

See DAMAGES, SUIT FOR.
GHATWALI TENURES.
INJUNCTION.
LAND ACQUISITION ACT.

COMPENSATION, LIABILITY OF JUSTICES FOR.

See BENG. ACT VI of 1863.

COMPENSATION TO ACCUSED—Act XXV of 1861, s. 270—Act X of 1872, s. 209. When a prosecutor fails to substantiate his charge by making contradictory statements, the Magistrate who tries the case under Chapter XV of the Criminal Procedure Code can award compensation to the accused, although he commit the prosecutor to take his trial on a charge of giving false evidence. **QUEEN v. RUPAN RAI**, [vi 296]

COMPLAINT.

See ACT X OF 1859, s. 145.

2. — *Dismissal of charge, ground for.* A Magistrate ought to hear evidence in support of a charge before dismissing the complaint. A bare assertion by an accused charged with committing theft of a proprietary right in the alleged stolen property, is no reason for a Magistrate to refuse to entertain the charge of theft. **QUEEN v. KALI CHARAN MISSEER**, [vi Ap. 55]

3. — *Dismissal without hearing evidence—Criminal Procedure Code (Act XXV of 1861), s. 270—Act X of 1872, s. 209.* On the day fixed for hearing of a complaint of trespass and assault made against three persons named, the complainant appeared with his witnesses, and the defendants also appeared; and on one of them being found to be a child of 8 years of age, the Magistrate dismissed the case without taking any evidence, and ordered compensation to be paid by the complainant to the defendants under s. 270, Act XXV of 1861. *Held*, the Magistrate was in error, and should not have dismissed the case merely because one defendant was a child. He should have followed the procedure laid down in ss. 265 and 266. Without hearing evidence he could not impose a fine under s. 270. **BILASH v. MAKROO** - - - - - ii S. N. xv

4. — *Withdrawal of—Act XXV of 1861, s. 270—Act X of 1872, s. 210.* Offences punishable under the Penal Code with more than six months' imprisonment are not triable under Chapter XV of the Code of Criminal Procedure, and consequently do not fall within the provisions of s. 271 of that Code. **ANONYMOUS CASE** - - - - - iv F. B. 41

5. — *Postponement for further evidence—Nonappearance—Dismissal of charge.* Where the charge was one under s. 347 of the Penal Code, and the evidence of the prosecutor and other evidence had been taken, and the case

COMPLAINT—continued.

postponed for the evidence of further witnesses which was considered necessary by the Magistrate, and they failed to appear, an order by the Magistrate dismissing the case for want of sufficient evidence was held to be illegal.

QUEEN v. BIDUR GHOSH - - - vii 9 note

6. — *Criminal Procedure Code (Act XXV of 1861), s. 68—Act X of 1872, s. 142—Knowledge—Report of Police—Interference of High Court.* [§ 68 of the Criminal Procedure Code applies only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint. That section is intended for the purpose of enabling a Magistrate to take care that justice may be vindicated, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute; and even in such cases the jurisdiction to arrest requires, for its foundation, knowledge of the fact of an offence having been committed, and that knowledge must be either personal or derived from testimony legally given. The report of the police, or any statement which falls short of an actual formal complaint, or of a statement made on oath, is not sufficient in law to give a Magistrate jurisdiction to issue his warrant. In this case, although the Magistrate had acted illegally before evidence was recorded, and had shown a want of discretion in some of the stages, the High Court refused to quash the Magistrate's order directing the prisoners to be put upon their defence, on the ground that the order had been made by a competent officer after hearing evidence which was judicially received and recorded. IN THE MATTER OF THE PETITION OF SURENDRA NATH ROY; QUEEN v. SURENDRA NATH ROY, v 274

7. — *Act XXV of 1861, s. 68—Knowledge—Private information.* [A belief founded on private and anonymous information is not knowledge within the meaning of s. 68 of the Criminal Procedure Code. IN THE MATTER OF MOHESH CHUNDER BANERJEE; QUEEN v. PURNA CHANDRA BANERJEE; QUEEN v. KALI SIKHAR - - - - iv Ap. 1

8. — *Irregularity—Transfer of case by Magistrate to Deputy Magistrate.* [S. T. brought a charge of theft against B., before a Magistrate. The case was made over to the Deputy Magistrate, on whose suggestion the Magistrate ordered that there should be a police enquiry. The Police Superintendent reported that, in his opinion, the charge was false, and that the plaintiff should be summoned for bringing a false charge; and the Magistrate, while declaring that he would not encourage charges of "false complaint," said that the injured party might swear an information if she chose. S. T. then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the police proceedings. The Magistrate recorded the following order: "The case has been dismissed, and the accused, Mrs. B., has received permission to prosecute the woman S. T. for false charge; the present petition may be

COMPLAINT—continued.

put in defence in that case." Held, that the order of the Magistrate must be quashed—(1) because he had no jurisdiction, the case having been made over to the Deputy Magistrate; (2) because the order above was not a judicial dismissal of the case. Case remanded for trial of the original charge as brought by S. T. SHANTO TEORNI v. BELILIOS iii Ap. 161

9. — *Dismissal of—Act XXV of 1861, s. 180—Act X of 1872, s. 146—Powers of Magistrate.* [The accused was charged before a Deputy Magistrate with an offence under s. 431, Penal Code. The Deputy Magistrate examined the complainant, took bail from the accused, but refused to examine the complainant's witnesses, although present, and delayed the investigation unnecessarily for a long time. The Magistrate of the district then called for the proceedings, and having looked at them considered that there was no case for the interference of the criminal Courts, and discharged the prisoner, although he was present and under bail. Held, that the Magistrate was not only competent but bound to discharge the prisoner, if his conclusion that no offence was made out was correct. But held also, that the Magistrate's conclusion was wrong, and that the act complained of, if true, did amount to an offence under s. 431 of the Penal Code; therefore the Magistrate's order was set aside, and further enquiry ordered. NIAMUTULLA v. GOPAL SAHA - - - xi Ap. 6

10. — *Criminal Procedure Code (Act XXV of 1861), ss. 66, 67—Act VIII of 1869, s. 66B—Act X of 1872, ss. 144, 147, and 49.]* A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate not authorized to receive complaints without reference from the District Magistrate, who tried and convicted the offender. Held per KEMP, J., that noncompliance with the provisions of s. 66 of Act XXV of 1861 made the subsequent proceedings void. Held per AINSLIE, J., that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under s. 66B of Act VIII of 1869, and that the subsequent proceedings therefore were valid. IN THE MATTER OF ISWAR CHUNDER KOER v. UMESH CHUNDER PAL - - - viii 19

11. — *Act XXV of 1861, ss. 66 and 273—Act X of 1872, ss. 144 and 44—Reference by District Magistrate to Subordinate Magistrate of complaint without previous examination of complainant.* [A District Magistrate is not bound, on receipt of a complaint, to examine the complainant under s. 66 of Act XXV of 1861 before referring the complaint to a subordinate Magistrate for disposal. The examination of the complainant by the Magistrate to whom the case has been referred is sufficient. QUEEN v. HARU - - - ix F. B. 146

12. — *Act XXV of 1861, s. 434—Examination of complainant—Interference by High Court—Act X of 1872, ss. 144, 147, 295,*

COMPLAINT—continued.

and 296.] Where a Magistrate had examined the complainant under s. 66 of Act XXV of 1861, and dismissed the complaint under s. 67, *held*, that the High Court would not interfere under s. 434. *QUEEN v. FORTU SHAH*,

[ii S. N. vi

13. — *Act XXV of 1861, ss. 66 and 180—Dismissal of complaint without recording evidence—Act X of 1872, ss. 144 and 140.* A. charged B. before a Magistrate for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the Police, and reported to be false. The Magistrate, without recording the complaint under s. 66 of the Code of Criminal Procedure, sent for the police papers, and under s. 180 of the same Code dismissed the case. *Held*, that the proceedings were illegal; that the Magistrate was bound, under s. 66 of the Code of Criminal Procedure, to record the examination of the complainant before he could, under s. 180, dismiss the complaint. *DULALI BEWA v. BHUBAN SAHA* — iii A. Cr. 58

14. — *Criminal Procedure Code (Act XXV of 1861), s. 67—Act X of 1872, s. 147—Dismissal without enquiry.* Where a Magistrate removed a case from the file of the Joint Magistrate to his own after complaint had been made and warrants issued by the Joint Magistrate upon the footing of the complaint, and thereupon suspended the warrant and dismissed the complaint without hearing it in due course of procedure, *held*, that it was an improper proceeding; he ought to have proceeded with the case from the stage at which it was when he removed it. *IN THE MATTER OF THE PETITION OF RAGHOO PARIBAH* — — — x Ap. 26

15. — *Dismissal of, for default in appearance of prosecutor—Discharge of accused.* In answer to a reference from a Sessions Judge the Court were of opinion that, in a case where the accused has been duly summoned or arrested under a warrant, and is present to meet any charge, and the complainant and his witnesses negligently fail to appear against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under s. 224, Code of Criminal Procedure, the accused person ought to be discharged; but also *held*, that the question did not arise under the circumstances of the case, and the case must go back to the Magistrate for investigation. *TAKI MAHOMED MANDAL v. KRISHNA NATH RAI* — — — vii 7

QUEEN v. ABDUL BISWAS — — — vii 8 note

But see *QUEEN v. BHAGABATI SATHAN*, [vii 9 note

16. — *Act X of 1872, ss. 144, 44, and 283—Criminal Procedure Code (Act XXV of 1861), ss. 66, 273, 426, and 439—Irregularity in commencing proceedings.* Under s. 66 of the Code of Criminal Procedure, the examination of the prosecutor should be reduced to writing, and signed by him. When a complaint is made before a Magistrate, but not reduced to writing, he cannot, under s. 273 of the Code of

COMPLAINT—continued.

Criminal Procedure, refer the case to a Deputy Magistrate for trial. *Ss. 426 and 439* do not apply to a case where the prosecution is not commenced by a complaint, as directed in the Code. A conviction with such irregularity cannot stand good, merely because the amount of punishment would have been the same if proper proceedings had been instituted. *QUEEN v. MAHIM CHANDRA CHUCKERBUTTY*,

[iii A. Cr. 67

17. — On receipt of a petition from the complainant, the Magistrate, without examining him, and reducing his examination into writing and obtaining his signature thereto, or appending his own signature as Magistrate, referred the petition to a Deputy Magistrate for trial. The Deputy Magistrate tried and convicted the accused. On a reference from the Sessions Judge, on the ground that the proceedings were irregular under s. 66, Act XXV of 1861, and that therefore the order of the Deputy Magistrate was without jurisdiction, — *held*, that the petition was sufficient, and that the Magistrate was justified in making over the petition to a Deputy Magistrate, who had the full powers of a Magistrate for enquiry and trial. *QUEEN v. UMESCHANDRA CHOWDRY*,

[v 160

18. — A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held*, that noncompliance with the provisions of s. 66 made the subsequent proceedings void. *QUEEN v. GRISH CHANDRA GHOSH* — — — — — vii 513

19. — A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint or authorization be contained only in a letter from the Judge of that Court to the Magistrate of the district, sent with the record of the case, notwithstanding an irregularity or defect of form in recording the complaint. The complaint or authorization of the Court before which, or against the authority of which, an offence mentioned in Chapter XI of the Code of Criminal Procedure is alleged to have been committed, is a sufficient warrant for commencement of criminal proceedings. *Queen v. Mahim Chandra Chuckerbutty* overruled. *QUEEN v. NARAYAN NAIK* — v F. B. 660

COMPROMISE—Construction of deed of—Hindu family—Deed altering proper course of succession according to Hindu law. Where a dispute in a Hindu family as to legitimacy and the right to succession resulted in a family arrangement as to the mode in which the estate was to be held by the sons,—*held*, that such a document ought not to be construed narrowly by a strict interpretation of the literal meaning of the words, but that the

COMPROMISE—continued.

object and general spirit are the best keys to the interpretation. Where a family arrangement, if construed strictly, would have given a talook in the event of the death of a younger son to such of the lawful widows as should have male issue,—*held*, that, as such a disposition would contravene the ordinary rules of devolution of Hindu property, and be contrary to the usages of Hindus, and as there was no mention of any change of intention as to the proprietary right, a construction which would postpone male issue to their mothers was inadmissible. *GAJAPUTHI RUDHIKA PATTU MUHUDEBI GURU v. GAJAPUTHI HURI KISHNA DEBI GURU*, vi P. C. 202

2. — *Decree made on compromise — Review of judgment — Altering decree.* The manager of the Court of Wards effected a compromise with claimants on the estate; a decree was passed on the basis of that compromise, but before the parties wished the decree to be made; in the decree, leave was reserved to apply for a review, if the compromise was not sanctioned by the Commissioner, and was prejudicial to the parties. The compromise was sanctioned by the Commissioner, but afterwards the manager found that he had been deceived by his servants, and that the claim had been allowed erroneously. *Held*, that the Court having granted a review, and the claim being proved to be exaggerated, a decree was properly given for the true amount. *LALJI SARU v. COLLECTOR OF TIRHOOT* — — — — — vi P. C. 648

3. — *Allegation of breach of.]* Two brothers executed and filed a deed of compromise, dividing between them the family property, and a decree was passed in terms thereof. Under this decree, the elder was to hold possession of certain lands, the rents of which were to go to perform the worship of the family idol. The elder was kept out of possession of these lands by the younger, and he performed the worship at his own expense, and the younger took out execution, objecting that his brother had not performed his trust as family sebaht, so that he had been compelled to perform the ceremonies at his own expense. But his objection was overruled. *Held* on appeal by the younger, that the nonperformance of any ceremonies by the elder brother gave him no cause of complaint, unless he could show that such failure was not caused by any default on his own part. *RAHJAJIBAN MUSTAFI v. TARA MANI DAS*, [ii P. C. 79

COMPROMISE BY LIQUIDATORS UNDER SANCTION OF THE COURT.

See COMPANY.

COMPROMISE, DEED OF.

See REGISTRATION ACT XVI OF 1864, s. 13.

COMPROMISE OUT OF COURT WITHOUT KNOWLEDGE OF ATTORNEYS.

See COSTS.

COMPROMISE PENDING APPEAL.

See STAMP.

COMPROMISE, POWER TO MAKE.

See HINDU LAW, WIDOW.

COMPROMISE, SUIT TO SET ASIDE.

See GUARDIAN.

CONCURRENT DECISIONS ON FACT.

See PRIVY COUNCIL, PRACTICE OF.

CONDITION PRECEDENT.

See CHARTER-PARTY.

CONTRACT.

CONDITIONAL TRANSFER OF PROPERTY.

See CHAMPERTY.

CONFESSION.

See EVIDENCE ACT, s. 30.

2. — *Credibility of.]* The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses deposing to a confession themselves arrived from the answers which the accused gave to questions put by them. Where an accused makes two distinct statements,—the one amounting to a confession of guilt, the other repudiating guilt,—if the one statement is taken against the accused, the other also must be taken, for what it is worth, in his favor. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other. *QUEEN v. SOOB-JAN* — — — — — x 332

CONFESSION MADE UNDER THREAT FOR A PURPOSE OTHER THAN TO EXTRACT CONFESSION.

See EVIDENCE ACT.

CONFESSION OF JUDGMENT BY DEFENDANT AT FILING OF PLAINT—*Discretion of Judge to hear the case.]* An insolvent defendant appeared and confessed judgment, at the suit of one of his creditors at the filing of the plaint. There were other suits filed by other creditors. The Judge (Recorder of Moulmein) gave a decision for the plaintiff, but declined to sign judgment, pending a reference to the High Court, under Act XXI of 1863, s. 22, on the following question:—Is the plaintiff entitled to a decree as of the date on which the defendant appeared and confessed judgment? *Held*, that the Judge has a discretion when parties have come to a mutual agreement, or when the defendant has confessed judgment, to decide the suit at once in accordance with such agreement or confession. He is not bound to do so till the time fixed for the regular hearing of the suit; and he cannot exercise that discretion where there is any doubt as to the good faith or identity of the parties. *BANK OF BENGAL v. CURRIE*, [iii A. C. 396

CONFISCATION BY GOVERNOR OF FOREIGN STATE.

See ACT OF STATE.

CONFISCATION OF SALT.

See BENG. ACT VII OF 1864.

CONFISCATION OF TERRITORIES OF KING OF DELHI.*See* ACT OF STATE.**CONSEQUENTIAL RELIEF.***See* DECLARATORY DECREE, SUIT FOR.**CONSIDERATION.***See* BILLS OF EXCHANGE ACT.

HINDU LAW, CONTRACT.

VENDOR AND PURCHASER.

CONSIDERATION, ILLEGAL.*See* PROMISSORY NOTE.

TROVER.

CONSIDERATION, INADEQUACY OF.*See* CONTRACT.

EVIDENCE.

CONSOLIDATION OF JUMMAS.*See* ENHANCEMENT OF RENT.**CONSTRUCTION 1841 OF 17th JUNE, 1842.***See* DECREE.**CONTEMPT OF COURT—Privilege from arrest—Party to suit proceeding to Court.]**

Where a writ of attachment for contempt was issued by the Court against a party to a suit in that Court, *held*, he could not claim privilege from arrest while proceeding to Court for the purpose of attending the hearing of his suit. *JOHN v. CARTER* - - - iv O. C. 90

2. — *Penal Code, s. 174—Criminal Procedure Code (Act XXV of 1861), s. 171—Power of subordinate Magistrate.* A subordinate Magistrate has no power to try an offence punishable under s. 174 of the Penal Code committed against his own Court, but is bound, under s. 171 of the Code of Criminal Procedure, to send the case, if in his opinion there is sufficient ground, for investigation to a Magistrate having power to try or commit for trial. *QUEEN v. CHANDRA SEKHAR ROY* - - - v 100

3. — *Resistance of process of Civil Court—Jurisdiction of Criminal Court—Penal Code, s. 186.]* The resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of criminal jurisdiction. *QUEEN v. BHAGAI DAFADAR*,
[H F. B. 21

4. — *Criminal Procedure Code (Act XX of 1861), ss. 163 and 168—Jurisdiction of Small Cause Court.]* A Judge of a Small Cause Court in the mofussil found a judgment-debtor guilty of resisting an officer of the Court in attaching property in satisfaction of a decree, and fined him. *Held*, that the Judge acted without jurisdiction. He ought to have sent the judgment-debtor before the Magistrate. *IN THE MATTER OF MANI CHANDRA DASS* - - - ii A. C. 188

5. — *Penal Code, s. 174—Act XXV of 1861, s. 219—Forfeiture of recognizance.]* In consequence of the default in the appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. *Held* that, notwithstanding s. 219 of Act XXV of 1861, the accused might have been proceeded against for contempt of Court under s. 174 of the Penal Code. *QUEEN v. TAJUMADDI LAHORY* - - - i A. Cr. 1

CONTINUING CONTRACT.*See* RES JUDICATA.**CONTRACT.***See* CONTRACT ACT.

SPECIFIC PERFORMANCE.

2. — *Consideration, proof of—Practice of Courts in India.]* It is the established practice of the Courts in India, in cases of contract, to require satisfactory proof that consideration has been actually received according to the terms of the contract, and a contract under seal does not of itself, in India, import that there was a sufficient consideration for the agreement. A plaintiff, however, suing to set aside a security admittedly executed by himself, must make out a good *prima facie* case before the defendants can be called on to prove consideration. *PTAHLAD SEN v. BODHU SING*; *KALI-PRASAD TEWARI v. PRAHLAD SEN*; *PRAHLAD SEN v. DURG PRASAD TEWARI*; *PRAHLAD SEN v. RUN BAHADUR SING*; *PRAHLAD SEN v. RAJENDRA KISHOR SING* - - - ii P. C. 11

3. — *Bill of sale—Agreement to transfer share of property in consideration of advances for suit for its recovery—Specific performance—Damages for breach of contract.]* Where it was agreed between A. and B. that, in consideration of certain proceedings to be instituted jointly by A. and B., and payments to be made by B., for the recovery of certain property claimed by A. against C., A. would make over the half of the property recovered to B.; but A., contrary to the terms of the agreement, without the consent of B., compromised his claim with C., and obtained possession. *Held*, the agreement did not operate as a transfer of the property to B.; she could not sue to eject A. *Seemle*.—B.'s proper remedy was a suit for specific performance or for damages for breach of the contract, to support which it would have been necessary to allege performance of her part of the contract, or at least readiness and willingness to perform, but prevention by A. *BHOBOSONDREE DASRAH v. ISSUR CHUNDER DUTT* - - - - - xi P. C. 26

4. — *Breach of Contract—Signature—Contract, alteration of, after being signed—Repudiation—Statute of Frauds.]* The plaintiffs contracted with the defendant for the purchase from him of a certain quantity of hog's lard. The terms of the contract were contained in a letter, which was drafted by the plaintiffs and sent to the defendant for signature. The defendant returned the letter unsigned, with two additional clauses. The plaintiffs not being able to agree to one of these clauses, had an interview with the defendant, when the defendant took the document away with him, and subsequently, on 17th May, returned it signed, but with the additional clauses still remaining. The plaintiffs had another interview with the defendant on 5th June, during which the additional clause objected to by the plaintiffs was struck out, one of the plaintiffs writing the word "cancelled" against that clause, and the defendant putting his initials against the word

CONTRACT—continued.

"cancelled." The plaintiffs then added to the contract the words "approved," together with "R. and C.," being the initials of their firm. Other alterations had been made in the document, and, it containing many erasures, the plaintiffs on the same day sent a fair copy to the defendant for signature, but the defendant wrote repudiating the alleged contract, and refusing to sign the document. *Held* (confirming the decision of the Court below), there was no binding contract between the parties. The signature of the defendant put to the document on 17th May was not a sufficient signature by the party to be charged, so as to satisfy the Statute of Frauds. *CHABRIOL v. SHIRCORE* - - - - - viii 305

5. — *Condition precedent—Part performance—Unseaworthiness*] In an action for breach of contract in not shipping certain goods, the defendants pleaded the unseaworthiness of the vessel. It was found that the ship was unseaworthy at the time of sailing, and that the defendants had placed part of the goods on board. *Held*, that it is a condition precedent that a vessel shall be in a proper state to take the goods on board for the purpose of the particular voyage; or in such a state that she may be made fit for the voyage with the goods on board, without such a delay as to frustrate the object of the merchant in shipping his goods. *Held*, that the putting part of the goods on board without knowledge of the unseaworthiness of the vessel was not a waiver of the performance of the condition. *Semble*.—Unseaworthiness at the time of sailing is not a breach of the condition. *TURNER, MORRISON, v. RALLI MAVROJANI*, [ii O. C. 127]

6. — *Non-acceptance—Breach of contract*.] The plaintiff entered into a contract with the defendant to deliver sulphur, to be imported by the ship *Michael Angelo*. No sulphur arrived by the *Michael Angelo* consigned to the plaintiff, and he procured it elsewhere, but the defendant refused to accept it. In an action for non-acceptance,—*Held*, reversing the decision of the Court below (*MARKBY, J.* ii S. N. ix), that the defendant was not bound to accept sulphur not imported by the *Michael Angelo*. *BIHARI LAL v. MADHUSUNDUN KUNDU* - - - - - ii O. C. 154

7. — *Breach of contract—"Ex. a certain ship"—Non-acceptance*.] By a contract entered into between the plaintiffs and defendant, the plaintiffs agreed to sell certain goods *ex a specific ship* to the defendant, the goods to be taken delivery of within forty-five days, and ten days to be allowed for inspection, and claiming allowance for any damaged goods, the defendant to take the risk of damage from the date of the contract. The period for taking delivery and for inspection dated from the 13th May. The plaintiffs did not receive the whole of the goods until 16th of June, and therefore were not ready to perform their contract by submitting them for inspection within the specified time: the defendant did

CONTRACT—continued.

not call upon them to do so. In a suit for breach of the contract by the defendant in not accepting the goods,—*held*, that the plaintiffs not being in a position to complete the contract, no cause of action had arisen. *Held* on appeal, that the goods ought to have been ready for inspection within the ten days stipulated, and the plaintiffs not having shown that they were ready and willing so to perform the contract, had no right of action, notwithstanding that the defendant never, in fact, called on them to deliver the goods for inspection. The word "*ex a certain ship*" must be taken to mean that the goods are really landed, and not in course of being landed, and therefore, independently of the question of the necessity on the part of the plaintiffs to show their readiness to perform their part of the contract, the defendant was not bound to take goods on board ship, in respect of which, if the contract were binding upon him, he would have been found to take the risk of any damage or loss to the goods on board ship, or in the course of landing. *ROBERTSON GLADSTONE v. KASTURY MULL* - - - iii O. C. 103

8. — *Sale of goods—Addition of words to contract*.] *R. G. G. & Co.* entered into a contract to sell certain goods to *A. S., N. S.*, both Calcutta firms. The contract, which was in a printed English form, was taken on the 18th December, 1868, by one *M.*, on behalf of the firm of *R. G. G. & Co.*, to obtain the signature of the vendees' firm. It was signed on their behalf by *A. S.* Neither *M.* nor *A. S.* understood English, and no explanation was given of the terms of the contract to *A. S.* at the time he signed it, but there had been negotiations between *M.* and *A. S.* as to these goods prior to the time when *A. S.*'s signature was obtained. It did not appear that the goods had been identified in any way by the purchasers, who had merely seen a sample. After his signature *A. S.* wrote in Nagri, "Goods fresh grenadines five cases at two annas and three pie per yard." *A. S., N. S.*, afterwards, on the 9th February, 1869, paid Rs. 1,000 as earnest-money, which was accepted by *R. G. G. & Co.*, who then allowed further time for taking delivery of the goods, which, however, *A. S., N. S.*, finding some of the goods were stained, declined to do. *R. G. G. & Co.* thereupon brought an action for breach of contract in not taking delivery, and a cross-suit was brought by *A. S., N. S.*, to recover the Rs. 1,000 paid as earnest-money. *Held*, that the words "fresh goods" after the signature of *A. S.* constituted part of the contract into which the parties entered, and by which they were bound. *MADHAB CHANDRA RUDAR v. AMBIT SING NARAYAN SING* v 111

9. — *Difference between articles contracted for and those tendered—Action for non-acceptance*.] The plaintiffs contracted to supply the defendants with from 275,000 to 300,000 of gunny bags described as No. 6 quality, size 40 by 28 inches, "the defendants to have the option of taking bags of a longer or shorter

CONTRACT—continued.

length at proportionate prices, duly giving a fortnight's notice to the plaintiffs, delivery to be taken in August, 1870." The defendants, after taking delivery of 11,600 of the bags, found that the bags tendered were mixed in size, some being longer and some being shorter than the contract size, and refused to take delivery of the remainder. In an action for breach of contract in not accepting the bags, the Court below found on the evidence that out of 2,000 bags which were examined, 100 were short by from a quarter to half an inch, but that the bags which were really short were very few out of a large quantity which came up to contract size, and held, therefore, that there had been a substantial performance of the contract on the part of the plaintiffs. On appeal, the Court found that the parties did not contemplate any large margin of difference in the size of the bags, and that the proportion of those which differed was large enough to justify the defendants in refusing to take delivery, and held that the tender of such bags by the plaintiffs was not a substantial performance of the contract. *MILLER v. THE GOURIPORE COMPANY* - - - viii 285

10. — *Sale of goods—Part acceptance of goods by defendant not according to contract—Rate payable for such goods.* The defendants contracted to purchase from the plaintiffs "2,000 maunds of fresh, clean, and good up-country indigo seed, guaranteed growth of season 1870-71, at Rs. 11 per maund, to be delivered to the defendants' agent at Hajipur in all February next. In part performance of this contract, the plaintiffs delivered, and the defendants' agent at Hajipur accepted, 865 maunds of seed, no objection as to quality being then taken. But when the remainder of the seed was tendered in February, the defendants refused to accept it on the ground that it was not according to contract. At the same time and upon the same grounds, they refused to pay the contract price for the seed already accepted, and tendered instead the market price at the time of delivery. In an action to recover the contract price of the 865 maunds delivered, and damages for loss on resale of the remainder of the seed, the Judge of the Court below found on the facts that the seed was not "seed of the growth of 1870-71" as far as it was reasonably possible to procure it; and that though there was evidence to show that seed of the previous season, if of good quality and in good preservation, was occasionally mixed with the new seed, and that seed so mixed had been accepted as a performance of contracts for 1870-71, yet there was no evidence that, under such contracts as the present, the seller was by custom at liberty to mix seeds of two crops so as to bring the sample up to an average quality; and, further, that a custom, so directly at variance with the express terms of the contract, could not, if proved, be allowed to prevail. *Held* also, that the defendants had

CONTRACT—continued.

waived any objection to the 865 maunds, which must therefore be taken as a good delivery *pro tanto* under the contract, and must be paid for accordingly. *Held* on appeal (affirming the decision of the Court below), that the plaintiffs had not delivered seed according to the contract; but (reversing the decision of the Court below) that the contract was a contract for the delivery of the entire quantity of 2,000 maunds; and that the plaintiffs could only recover for the 865 maunds as on a new contract arising at the time when the seed was accepted; such contract being to pay for the seed according to its value, and not according to the rate stipulated for the 2,000 maunds. *MACFARLANE v. CARR* - - - viii 459

11. — *Carriers—Railway receipt—Jus tertii—Title.* In March, 1871, *T. & Co.*, brokers in Calcutta, sold to *S. & Co.*, on account of *C.*, an up-country seed merchant, 200 tons of poppy-seed, and allowed *C.* to draw upon them to the extent of the value of fifty tons before despatch, on the terms of a previous contract, by which they had allowed *C.* to draw against cotton to arrive in Calcutta before the drafts matured, *C.* authorizing them to receive payment on his account on goods sold and delivered through them. Towards the end of March, *C.* entered into an agreement with *E.*, a merchant in Calcutta, under which *E.* accepted bills to a large amount for *C.*, upon *C.*'s promise to cover the bills before maturity. In June *C.* ordered the defendant Railway Company to consign all goods despatched from Fyzabad to *E.*'s address, and empowered *E.* to take delivery of, and give receipts for, all such goods. In the same month, *C.* despatched from Patna, in bags supplied by *S. & Co.*, fifty-five tons of poppy-seed to Calcutta, and sent the railway receipt to *E.*, who was therein named as the consignee. One of the terms printed on the receipt stated that goods would only be delivered to the consignee named in the receipt, or to his order. In advising *E.* of the despatch of poppy-seed, *C.* informed him that it had been sold to *S. & Co.*, and that delivery was to be made through *T. & Co.*, and *E.* had also seen letters which passed between *C.* and his agents, in which the following passages occurred: "Our Calcutta firm will deliver the poppy to *T. & Co.*," and "Do your best, and hurry off despatches of fifty tons of poppy; the rest of the poppy and linseed can go to *E.*" *E.* endorsed the railway's receipt to *S. & Co.*, who paid the freight, and sircars of *E.* and *S. & Co.* together went to the railway station and demanded delivery, which the Railway Company at first promised to give, but afterwards, under an order from *C.* to "deliver fifty tons to *T. & Co.*, and to no other party, the rest of the seed to be delivered according to documents," they, at *T. & Co.*'s request, delivered the whole fifty-five tons to them. In an action by *E.* against the Railway Company for non-delivery of the

CONTRACT—continued.

seed to him,—*held* (per MARKBY, J.) *E.* was mere agent of the vendor for the delivery of the goods; *T. & Co.* had superior title to the goods, of which *E.* had notice. *Held* (per COUCH, C. J., and MACPHERSON, J., on appeal) the Railway Company was bound to deliver to *E.* The property in the goods and the right of possession was in him; he had an authority coupled with an interest which *C.* could not revoke; he had no notice of the title of *T. & Co.*, which was an equitable right only. **EAGLETON v. THE EAST INDIA RAILWAY COMPANY** - - - viii 581

12. — *Illegal contract.*] The defendant, with the expressed intention of benefiting the judgment-debtor, and of thwarting the judgment-creditor against whom he had a grudge and for whom he entertained ill-feeling, entered into a contract with a pleader of the Court in which the decree had been obtained, to pay him Rs. 50 if he could get the case, which was decreed, dismissed, struck off, or any how rejected from the file of the Court. *Held*, that the contract was one against public policy, and could not be enforced. **BAMANDAS BANERJEE v. HAROLAL SHAHA** - i S. N. x

13. — *Agreement to join Somaj.*] A suit, brought to enforce a penalty for breach of an agreement by which the defendant contracted to join a certain Somaj, of which the plaintiffs were members, and agreed that he would not, without the plaintiffs' permission, leave the community or join any other, it was *held*, must be dismissed, the contract not being one capable of being enforced in a Court of law. **NITAI SHAHA v. SHUBAL SHAHA** - - - - - ii S. N. iv

14. — *Illegal cess.*] Every contract relating to the collection from ryots and payment to the zemindar of an illegal cess is *ab initio* void. **KAMALA KANT GHOSE v. KALU MAHOMED MANDAL** - - - - - iii A. C. 44

15. — *Payment in consideration of releasing person from prison.*] The plaintiff's husband being in jail, the plaintiff agreed with the defendants to pay them Rs. 50 in consideration of their obtaining her husband's release, which they stated they could do. She accordingly paid the money. In an action for breach of contract, *held*, the action would not lie, as the contract was an illegal one. **PROTIMA AURAT v. DUKHIA SIRKAR** - - - ix Ap. 38

16. — *Marriage, contract to invalidate—Public policy—Hindulaw.*] A contract entered into by Hindus living in Assam, by which it is agreed that, upon the happening of a certain event, a marriage is to become null and void, is contrary to the policy of the law, and a suit cannot be maintained upon it. **SITARAM v. AHEKREE HEERAHNEE** - - - xi 129

17. — *Fraudulent misrepresentation—Marriage presents—Suit to recover value of.*] *A.* entered into a contract with *B.* for the marriage of his daughter *C.* The marriage was duly performed, but *C.* was never sent to the house of *B.*, and *B.* thereupon institut-

CONTRACT—continued.

ed a suit to compel *C.* to live with him; but the suit was dismissed on the ground that the marriage was invalid, it being found that *C.* was of age at the time of the marriage, and that her consent was not given. In a suit brought by *B.* against *A.*, to recover as damages the value of certain presents he alleged he had made to *C.*'s family in consideration of the marriage, *held*, that the plaintiff was not entitled to recover, unless he could show fraudulent representations on the part of the defendants in consequence of which he was induced to contract the marriage and incur the expenses sought to be recovered. The case was remanded for the trial of the issue of fraud. **ASGAR ALI CHOWDHRY v. MAHABHAT ALI** - xiii Ap. 34

18. — *Inequitable contract—Stipulation in ikrar for payment of interest at high rate.*] The plaintiff advanced money to the defendants on an ikrar, by which it was agreed that he was to allow them to draw on him to the extent of Rs. 20,000 within three years, the plaintiff to repay himself by having an ijara of the defendants' share in certain property which his loan was to aid them in recovering. A 4-anna share of the profits, after deducting Government revenue and expenses, was to go in payment of interest on the money lent; half of the remaining three-fourths to go towards payment of the principal, and the other half to the defendants. If, at the end of the term, any balance remained due to the plaintiff, the defendants were to pay it with interest at 18 per cent. If the defendants failed to give the ijara, they agreed to pay the amount borrowed with interest at 6½ per cent. per mensem. The plaintiff advanced the money and obtained a receipt therefor from the defendants. The defendants failed to give the plaintiff the ijara. In a suit brought to recover the sum lent by the plaintiff with interest, the first Court gave a decree for the plaintiff for the sum claimed with interest at the higher rate stipulated for in the ikrar, *viz.*, 75 per cent. On appeal by the defendants to the High Court, *held* that, in the absence of evidence of any fiduciary relation between the parties, of any imposition or misrepresentation on the part of the plaintiff, or any want of capacity on the part of the defendants, and there being nothing in the circumstances which led to the execution of the ikrar to show that there was any constructive fraud on the part of the plaintiff, or any undue advantage taken by him, the contract was not one which the Court would set aside as being unreasonable, inequitable, or oppressive in character. **OMDA KHANUM v. BROJENDRO COOMAR ROY CHOWDHRY** - - - - - xii 451

CONTRACT ACT—Operation of.] *Semble.*—The Contract Act is not retrospective. **OMDA KHANUM v. BROJENDRO COOMAR ROY CHOWDHRY**, [xii 451

—, ss. 24, 25, and 57 — *Post-nuptial contracts—Contract partly legal and partly*

CONTRACT ACT, ss. 24, 25, and 57—continued.

illegal.] The defendant, a Mahomedan husband, executed a kabinnama in favour of his wife, by which he agreed, among other things, that he would maintain her and make over to her whatever money he should earn; that he would never exercise any violence upon her; that he would not take her away from home; that it should not be within his power to marry or make any nika without her permission; that he would do nothing without her permission, and, if he did, she should be at liberty to divorce him, and realize from him the amount of dinmohur forthwith, and the nika would then be null and void. The plaintiff sued her husband upon this document, which was registered, to recover from him all his earnings amounting to Rs. 565, after deducting Rs. 54, which she admitted having received from him. The lower Appellate Court held, reversing the decision of the Munsif, that the agreement had been made subsequently to the marriage, and was, though registered, void for want of consideration. *Held* on appeal, that the agreement, being registered, came within s. 25 of the Contract Act, and was not void on the ground that there was no consideration. Although some parts of the agreement might be illegal as being contrary to public policy, and therefore void, yet those which were legal could be enforced. The Court treated the suit as one to enforce that part only of the contract which was legal, and considered the plaintiff entitled to recover a fair sum for her maintenance. POONOO BIBEE v. FYZE BUKSH,

[xv Ap. 5]

—, s. 27—*Small Cause Court, law of—Agreement between Hindus—Acts IX of 1850 and XXVI of 1864—21 Geo. III, c. 70, ss. 17 and 18—Letters Patent, 1862, cl. 18—Letters Patent, 1865, cl. 19—Contract in restraint of trade.*] The effect of Act XXVI of 1864 is, that suits in the Small Cause Court are to be decided according to the law or equity administered in the High Court; by the Charter of 1862 that law or equity was to be "the law or equity which would have been applied by the Supreme Court," and by the Charter of 1865 that "which would have been applied by the High Court" under the Charter of 1862. The Statute 21 Geo. III, c. 70, which applied to the Supreme Court, and gave to Hindus the right to have matters of contract decided by their own laws, became, if its provisions apply to the High Court, part of the law of that Court not by virtue of the Statute itself, but by virtue of the Charter, which was subject to alteration by the Governor-General in Council; and having ceased to have any operation as an Act, it was unnecessary to repeal it expressly by the Contract Act (IX of 1872). That Act is applicable to Hindus residing in Calcutta; therefore, where the plaintiff, a Hindu, agreed with the defendants, also Hindus, that he would cease to carry on his business in a certain locality in Calcutta, in

CONTRACT ACT, s. 27—continued.

consideration of receiving from them a specified sum, it was *held*, in a suit to enforce the contract, that such an agreement was void under s. 27 of the Contract Act. The words "not inconsistent with the provisions of this Act," in s. 1 of the Contract Act, apply to "any usage or custom of trade" or "any incident of any contract." MADHUB CHUNDER PORAMANICK v. RAJCOOMAR DOSS - xiv 76

—, ss. 78, 77, 84, and 107—*Resale, notice of—Right of unpaid vendors—Nominal damages.*]

The defendant purchased from the plaintiffs a cargo of Watson's Hartley steam coal at Rs. 21 per ton, to arrive by ship *Grecian*, but on its arrival, the defendant, on being called upon to do so, refused to take delivery, on the ground that the usual certificate that the coal was what it was stated to be did not accompany the cargo. The plaintiffs thereupon gave notice to the defendant that, unless delivery were taken, the coal would be sold on his account and at his risk, and on the defendant repeating his refusal to take delivery, the plaintiffs caused the coal to be sold, and it was purchased in the name of *M. & Co.* for Rs. 13 per ton. In a suit, which was stated in the plaint to be for the loss sustained by the plaintiffs on the resale, the Court found that the plaintiffs themselves were the real purchasers, and that the sale had taken place without proper notice, and under the circumstances was invalid. *Held*, both in the lower Court and on appeal, that the plaintiffs had, by the way in which they had dealt with the coal, rendered themselves accountable to the defendant in respect thereof, and that notwithstanding the defendant had committed a breach of the contract in refusing to take delivery of the coal, the plaintiffs were bound to give an account of the coal and prove that they had sustained a loss on the resale, and on their omission to do so, they were not entitled to recover any damages. *Held* on appeal *per* MARKBY, J., that the plaintiffs were not entitled to put aside the sale as invalid, and treat the case as one for damages for breach of contract. Under the circumstances they were not entitled to even nominal damages. The mere shipment on board the *Grecian* did not pass the property in the coal to the defendant under s. 77 of Act IX of 1872. *Per* PONTIFEX, J.—Whether, by virtue of the contract and the subsequent appropriation and shipment, the property in the coal passed or did not pass to the defendant within the meaning of s. 84 or s. 83 of Act IX of 1872, even if the sale were invalid, the plaintiffs were not entitled, considering their conduct in dealing with the coal, and the concealment of their interest in the purchase, and in the absence of satisfactory evidence of what ultimately became of the coal, to recover any damages. BUCHANAN v. AYDALL - - - - - xv 276

—, s. 108, except. 1—*Possession of good by person other than owner—Title conveyed by vendor to vendee.*] The plaintiff let to

CONTRACT ACT, s. 108, excep. 1—continued.

D. a piano on hire on the following terms:—“At Rs. 30 per month; if duly paid for and kept three years, shall then become the property of hirer.” These terms were embodied in a voucher which was signed by *D.* The monthly hire was not regularly paid, and the plaintiff sued for and obtained a decree for a portion of the hire up to May, 1873. Subsequently, in that month, *D.* sold the piano to the defendant, who obtained delivery of it in June. In a suit by the plaintiff in trover for conversion of the piano, the Judge found that the defendant acted in good faith. *Held*, that the possession acquired by *D.* was not possession by consent of the owner within the meaning of s. 108 of Act IX of 1872, excep. 1, and that he did not, by sale to the defendant, transfer the ownership in the piano to him. Excep. 1 of s. 108 does not apply where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose. *GREENWOOD v. HOLQUETTE* - - - - xii 42

CONTRACT, BREACH OF.

See ACT XIII OF 1859.

DAMAGES, SUIT FOR.

CONTRACTORS, DAMAGE DONE BY.

See BENG. ACT VI OF 1863.

CONTRADICTORY STATEMENTS.

See FALSE EVIDENCE.

CONTRIBUTION, SUIT FOR.

See HINDU LAW, JOINT FAMILY.

LIMITATION ACT XIV OF 1859,
s 1, CL. 16.

SMALL CAUSE COURT, MOFUSSIL.

2. — *Mortgage debt — Apportionment of decree according to share of purchased property—Payment of money for which other person is liable.*] In execution of a decree, the right, title, and interest in two parcels of property of a judgment-debtor, who had, previous to the attachment, executed a simple mortgage thereof to *A.*, were sold; and *B.* and *C.* respectively purchased them at different prices. *A.* sued the mortgagor and the purchasers *B.* and *C.* for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court, but on appeal the order was “appeal decreed.” *A.* entered into a compromise with *B.*, and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against *C.*, and compelled him to pay. *C.* now sued *B.* for recovery of the proportion of the amount paid by him to *A.*, but which, according to the valuation of the respective properties, should have fallen into the share of *B.* *Held*, that the debt due upon the mortgage-bond was a general burden upon the two properties, for which no portion of those two properties was more liable than the other. *Held* also, that, as between the plaintiff and defendant, the liability was not joint, but several, in proportion to the respective values of the properties, and that the plaintiff, having been compelled to pay money for which the property of defendant was legally liable,

CONTRIBUTION, SUIT FOR—continued.

was entitled to recover the amount from the defendant. *BHAIRAB CHANDEA MADAK v. NADYAB CHAND PAL* - - - - iii A. C. 357

3. — *Payment to stay sale — Voluntary payment.*] *A.* was in possession of certain lands in lieu of dower. *B.* put up to sale, in execution of a decree against *C.* (*A.*'s husband), *C.*'s rights and interest in those lands. *A.*, under protest, deposited in Court the amount claimed in order to stop the sale, and consented that it should be paid over to *B.* until the rights of the parties could be settled in a regular suit. *A.* then sued *B.* for a refund of the money on the ground that at the time of *B.*'s attaching the property his decree against *C.* had been already satisfied. The Zilla Court gave a decree for *A.* upon the merits. The High Court on appeal *held*, that the payment into Court was a voluntary payment, and therefore *A.* had no right of action against *B.* *Held* (reversing the decision of the High Court), that the payment was not a voluntary payment. *FATIMA KHATUN v. MAHOMMED JAN CHOWDHRY* - - - i P. C. 21

4. — *Voluntary payment.*] A decree-holder for arrears of rent against three persons jointly placed certain sums of money in Court to the credit of one of them.—*viz.*, the plaintiff, who, in her capacity of guardian of her son, had a cross-decree against him, and afterwards he withdrew those sums in execution of the joint decree. Thereupon the plaintiff sued the other two joint-debtors for contribution, as he had repaid to her minor son the sum of money so taken away. *Held*, that the payment by the plaintiff to her minor son was a voluntary payment, and was not therefore such a payment as entitled her to sue her joint debtors for contribution. *RAJLAKHI DEBI v. TARAMONEE CHOWDHRAIN* - - - - ii A. C. 281

5. — *Joint bond.*] *A.* and *B.* jointly executed a bond in favour of *C.* When the bond fell due *A.* alone executed a second bond for a larger amount in favour of *C.*, covering the amount of the debt under the former bond together with a further advance to him (*A.*) At the same time *C.* cancelled the former bond. *Held*, that thereupon *A.* could maintain his suit against *B.* for contribution. *TRAILAKHANATH ROY v. KASHINATH ROY* vi 633

6. — *Interest — Act XXXII of 1839.*] In suits for contribution it is in the discretion of the Court to allow or refuse interest on the amount claimed, whether there has been a written demand for it or not, inasmuch as Act XXXII of 1839 does not apply to such suits. *BISTOO CHUNDER BANERJEE v. NITHORE MONEE DABEE* - - - x 352
LULLEET BISWAS v. PROSONNOMOYEE DOSSEE.
[x 353 note

7. — *Cause of action — Decree against one of several joint debtors.*] The mere existence of a decree against one of several joint debtors does not afford ground for a suit for contribution against the other

CONTRIBUTION, SUIT FOR—continued.

debtors. **RAM PERSHAD SINGH v. NEERBHOY SINGH** - - - - - xi 76

8. — *Wrong-doers—Costs.* The plaintiff and defendants jointly opposed and prevented the ameen of a zemindar from measuring certain lands. The zemindar thereupon brought a suit against them to have his right to measure declared, and obtained a joint decree with costs. In execution of the decree for costs, the property of the plaintiff was attached, and he solely paid the whole amount due for costs. The plaintiff now sued the defendants for contribution. *Held*, that such a suit would lie. **RUTTEE SIRDAR v. SAJOO PORAMANICK.** [xi 345]

9. — *Purchase of decree by one of several judgment-debtors—Execution.* One of several joint judgment-debtors who has taken an assignment of the decree cannot execute it against his co-debtors. His only remedy is to sue them for contribution towards the amount he paid for the decree in the proportion in which they were bound, *inter se*, to satisfy the decree. **IN THE MATTER OF THE PETITION OF DIGUMBURÉE DABEE; IN THE MATTER OF THE PETITION OF SOROOP CHUNDER HAZRA.**

[Sup. Vol. 938]

10. — *Voluntary payment—Sum paid for arrears of rent.* The plaintiff brought a suit against the defendants, to recover as contribution their share of a sum paid by him for arrears of rent due on a farming lease in a zemindari which had been purchased by the plaintiff. *Held*, the payment was a voluntary one, and the suit therefore would not lie. **KRISHNA KISHOR PODDAR v. KAILAS CHANDRA MOOKERJEE** - - - - - vi 641 note

CONVICTION.

See WHIPPING.

2. — *Beng. Act VI of 1866—Fine for continuing offence.* Sagur Dutt was convicted before a Justice of the Peace for using a warehouse, &c., in the town of Calcutta for the keeping and storing of jute other than jute screwed for shipment, without a license, and for his said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 25 for every day after the conviction on which the offence was continued. *Held*, that the conviction was bad. **IN THE MATTER OF SAGUR DUTT; QUEEN v. THE JUSTICES OF THE PEACE FOR CALCUTTA** - - - - - i O. Cr. 41

IN RE LOVE - - - - - ix Ap. 35

IN THE MATTER OF THE PETITION OF THE CHAIRMAN OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v. ANEESOODDEEN MEAH - - - - - xii Ap. 2

3. — *Plea of guilty—Assessors—Criminal Procedure Code (Act XXV of 1861), s. 362.* A conviction of a prisoner on a plea of guilty before a Court of Session is valid, although there were no assessors. **QUEEN v. SRIKANT CHARAL** - - - - - ii F. B. 23

CONVICTION, SETTING ASIDE, FOR ERROR IN LAW.

See ACCOMPLICE.

COOCH BEHAR, COURT OF THE DEWAN AHIL-KAR OF.

See CIVIL PROCEDURE CODE, s. 284.

COPY OF COPY OF DOCUMENT.

See EVIDENCE.

COPY OF DECREE OR JUDGMENT, DEDUCTION OF TIME NECESSARY FOR OBTAINING.

See LIMITATION ACT IX OF 1871, s. 13.

COPYRIGHT OF ORNAMENTAL DESIGN—5 and 6

Vict., c. 100—24 and 25 Vict., c. 73. A registered proprietor of the copyright of an ornamental design within the United Kingdom, under 5 and 6 Vict., c. 100 (amended by 6 and 7 Vict., c. 65, 13 and 14 Vict., c. 104, and 21 and 22 Vict., c. 70) cannot sustain an action against any person who applies such design to articles, or who sells any articles to which such design has been applied, in British Burmah. **BAKER v. SUTHERLAND** - - - - - viii 298

CORPORATION, SUIT AGAINST.

See PLAINT.

CO-SHAREE OF PROPERTY SOLD, SUIT FOR DAMAGES AGAINST DECREE-HOLDER BY.

See SALE IN EXECUTION OF DECREE.

CO-SHARERS.

See COSTS.

PARTITION.

ZEMINDAR, RIGHTS OF.

2. — *Joint property—Erection of building by one co-sharer.* A. sued B. for possession of certain land on which B. had erected a building, on the allegation that it belonged jointly to them, as well as for removal of the building from the land. It was found, as a fact, that the land was held jointly by A. and B. *Held*, that B. had no right to do anything which altered the condition of the joint property without the consent of his co-sharer, and it was rightly ordered that B. should remove the building from the land. **GURU DAS DHAR v. BIJAYA GOBINDA BARAL** - - - - - i A. C. 108
HOLLOWAY v. WAHID ALI - - - - - xii 191 note

3. — The plaintiff sued for possession of a one-third share of certain land after demolition of the buildings erected thereon by the defendants, who were her co-sharers. *Held*, that the plaintiff was not entitled to a decree for demolition of the buildings, as she had no right to compel her co-sharers to adopt her views of the enjoyment of the property. She could only get a decree for possession of an undivided one-third share. **BINDABASINI DEBI v. PATIT PABAN CHATTAPADHYA** iii A. C. 267

4. — Where two parties were joint owners of land, and one of them erected a wall upon the land without obtaining the consent of his co-sharer, *held*, that the Court would not interfere to order the demolition of the wall when there was no evidence to show that injury had been done to the co-tenant of the building by its erection. **LALA BISWAMBHAR LAL v. RAJARAM** - - - - - iii Ap. 67

CO-SHARERS—continued.

5. — One of several co-sharers of joint undivided property has no right to erect a building on land which forms a portion of such property, so as to materially alter the condition thereof, without the consent of his co-sharers. *SHEOPERSAD SINGH v. LEELA SINGH*, [xii 188]

6. — In a suit in which it was sought to demolish a building which had been erected by the defendant on land belonging to himself and the plaintiff jointly, *held* that, as a co-partner, the defendant was entitled to use the whole land, and if in erecting the building he took possession of more land than he would be entitled to on partition, the suit should have been for division of the lands, and not for demolition of the building. *DWARKANATH BHOOTYA v. GOPERNATH BHOOTYA* xii 189 note

7. — One of several co-sharers of joint undivided property has no right to take exclusive possession and alter the condition of any portion of the joint property without the consent of his co-sharers, and the Court will grant an injunction to restrain him from doing so. *STALKAETT v. GOPAL PANDAY*, [xii 197]

8. — The defendant was in possession of land under a patta granted by the ijaradars of the proprietors, and thereon commenced to build a house and plant a garden. The plaintiff, who had bought the right, title, and interest of one of the proprietors, sued to restrain him. He did not allege any injury. *Held*, that such suit would not lie. *SRICHAND v. NIM CHAND SAHEE* - - - v Ap. 26

See also *NABIN CHANDRA MITTER v. MAHES CHANDRA MITTER* - - - iii Ap. 111

But see *IN THE MATTER OF THAKOOR CHUNDER PARAMANICK* Sup. Vol. 595, at p. 597 note

9. — *Joint property—Altering property without consent of co-sharers—Growing indigo.* Several persons jointly held lands which were not divided by metes and bounds, but in specified shares. One of the shareholders leased out his share or interest in the lands. The lessee sowed indigo in the joint lands. The other shareholders brought a suit to restrain the lessee of their co-sharer from growing indigo on the land. *Held*, that a co-sharer cannot use *ijmalee* lands so as to alter the condition of the property as regards the other shareholders without their consent; that indigo as a crop being valueless for purposes of distraint, the lessee must be restrained from growing it without the consent of all the proprietors. *CROWDER v. BHEKDHARI SINGH*, [viii Ap. 45]

10. — *Parties—Suit by one co-sharer for separate share of rent.* One of three co-sharers of certain property, the rent of which was paid by the tenant to a person acting as agent of the co-sharers, from whom they received it in proportion to their respective

CO-SHARERS—continued.

shares, brought a suit against the tenant for her share of the rent, of which he alleged her co-sharers were colluding with the tenant to deprive her. To this suit she made her co-sharers defendants. The defendants alleged that she had not received, and was not entitled to receive, the rent from the tenant; but the lower Courts found these facts in her favour, and gave her a decree. It was objected on special appeal that the suit would not lie, inasmuch as the plaintiff being one of several co-sharers was not competent to sue alone for her share of the rent. *Held* that, under the circumstances, and the co-sharers having been made defendants, the suit was maintainable. *DOORGA CHURN SURMA v. JAMPA DASSEE*, [xii F. B. 289]

11. — A landlord, one of several co-sharers, cannot sue a tenant of the joint estate for his separate share of the rent unless the tenant has paid or agreed to pay to him separately. *GANGA NARAYAN DAS v. SARODA MOHAN ROY CHOWDHRY* - - - iii A. C. 230

12. — One of undivided joint sharers of land cannot sue alone for his share of the rent of the land without specifying the land in respect of which the suit is brought. *BYRUB MUNDUL v. GUNGARAM BONEERJEE*, xii 290 note

13. — Each of two shareholders in a talook sued separately for his share of the rent due from a tenant who held under one *kabuliat*. *Held*, that when both the shareholders were before the Court, though in different suits, the suits were maintainable, but that no more costs were to be awarded to the plaintiffs than if they had sued jointly. *PYARI MOHAN SING v. MIRZA GAZI* - - - ii A. C. 337

14. — A proprietor of a fractional share of an undivided estate may sue to obtain a *kabuliat* from the ryot without making his co-sharers parties, when there is no dispute as to his share, and when the tenant has paid him rent separately for his share. *RAMNATH RAKHIT v. CHAND HARI BHUYA* - - - vi 356

15. — Where a tenant had executed a *kabuliat* to four persons, *held*, two of them could not sue him for arrears of rent in the Collector's Court, making their other two co-sharers, or their representatives, defendants jointly with him. *GANGA GOBIND SEN v. GOBIND CHANDRA ROY* - - - iv Ap. 39

16. — A *kabuliat* was executed by one of the defendants to the plaintiff for the entire 16 annas of an estate, of which the plaintiff admitted, at the time of the execution of the *kabuliat*, he was only proprietor of 8 annas. The owner of the other 8 annas share was made a defendant in a suit brought by the plaintiff in the Revenue Court to recover his share of the rent under the *kabuliat*. *Held*, that the plaintiff was not entitled to sue separately for his share of the rent, even though he made his co-sharer defendant to the suit. *KALINATH BANERJEE v. MAHOMED HOSSEIN*, [vi 528 note]

CO-SHARERS—continued.

17. — A kabuliati was executed in respect of certain lands by B., P., and K., in favour of R., by which they agreed to pay to R. an annual rent of Rs. 9,000. R. died, leaving two daughters. In a suit in the Revenue Court by one of the daughters against B., P., and the representatives of K., to recover a moiety of the rents due for a certain period under the kabuliati, the other daughter refused to join as a plaintiff, and was not made a defendant, *held*, that the plaintiff was not entitled to sue alone, or without making her sister a party to the suit. On her sister's refusal to join as a plaintiff, she ought to have been made a defendant. *JAGADAMBA DAS v. HARAN CHANDRA DUTT* - - - vi 526 note

18. — One of several co-sharers cannot sue for his separate share without making his co-sharers parties to the suit. *INDROMONEE BURMONEE v. SUBROO CHUNDER PAUL*, [xii 291 note]

HURKISHOR DAS BHOOYA v. JOOQUL KISHOR SAHA ROY - - - xii 293 note

NANOO ROY v. JHOOMUCK LALL DOSS, [xii 292 note]

19. — *Suit for kabuliati by proprietor of fractional share in estate.* A proprietor of a fractional share of an undivided estate, though receiving a definite portion of the rent from the ryot, is not entitled to maintain against him a suit for a separate kabuliati in respect of such undivided share. *SARATSUNDARI DEBI v. WATSON* - - - ii A. C. 159

20. — One of the shareholders of an undivided zemindari cannot institute a suit to obtain a separate kabuliati from a ryot for his fractional share thereof. *UDAYA CHARAN DHAR v. KALITARA DAS* - - - ii Ap. 52

See also *INDRA CHANDRA DUGAR v. BINDABAN BHARA* - - - viii 252

21. — *Joint property—Suit to set aside sale for arrears of revenue—Splitting suits—Separation of claims.* A., B., C., D., and E. were joint lessees, without specification of shares, under Government, of a certain mehal. The estate was sold for arrears of revenue. A., B., C., D., and E. each brought a suit separately to set aside the sale. *Held*, that as the estate was single and indivisible, and the cause of action and relief sought in each case was the same, the claim of the lessees could not be split into five distinct suits. *BISWANATH BHUTTACHARJEE v. THE COLLECTOR OF MYMENSINGH* - - - - - vii Ap. 42

22. — *Suit by one co-sharer to set aside rent sale.* Where a patni talook, belonging to several co-sharers, each of whom collected his own share of rent from the mehal, was sold for arrears of rent, and one of the co-sharers brought a suit in the Munsif's Court to recover possession of his share by setting aside the sale, and valued his suit according to his share, making the other co-sharers defendants,—*held*,

CO-SHARERS—continued.

that the suit could not be maintained in that form. The cause of action was the sale of the whole estate, and the suit should have been framed and valued accordingly, and brought in a Court in which the rights of all the parties interested in setting aside the sale might have been declared in one suit. *UNNODA PERRAD ROY v. ERSKINE* - - - - - xii F. B. 370

23. — *Accounts—Limitation—Receipts of rent by co-sharers.* Where persons jointly interested in an estate arranged that the rents should be received by an agent, and they themselves sometimes collected direct from the tenants, such collection being treated as a receipt by the agent or by some one on his behalf, and not as a collection antagonistic to the rights of the other joint tenants, the law of limitation is no bar to taking the back accounts. Where one tenant in common receives rents, and then relinquishes his interest in the estate to another, that other is not answerable to the third tenant in common for any claim he may have against the first for having received more than his share. *KHAJURUNNISSA v. AHMED REZA, AND AHMED REZA v. KHAJURUNNISSA* - - - - - viii 93

24. — *Payment of arrears of revenue by one co-sharer—Charge on share of estate in hands of a purchaser.* B., the owner of a fractional share in a joint mehal, mortgaged her share to A. A. obtained a decree on her mortgage, and attached B.'s share in the estate, and afterwards purchased the same at the execution-sale. Whilst her share was under attachment, B. stopped paying the Government revenue, whereupon the plaintiff, a co-sharer in the estate, paid the whole revenue in order to save the mehal from sale. In a suit brought against A. and B. for recovery of the sum paid by the plaintiff on behalf of B.'s share, *held*, that the plaintiff was entitled to have the sum so paid declared to be a charge upon the share of B., which had been transferred to A., but not to a personal decree against A. *ENAYET HOSSEIN v. MUDDUN MONEE SHAHOON* - - - - - xiv 155

CO-SHARERS OF JOINT UNDIVIDED ESTATE, RIGHT OF, TO MEASUREMENT.

See BENG. ACT VIII of 1869, s. 37.

CO-SHARERS, SUIT BY ONE OF SEVERAL.

See BENG. ACT VIII of 1869, s. 102.

COSTS.

See APPEAL.

ATTORNEY AND CLIENT.

BILLS OF EXCHANGE ACT.

CIVIL PROCEDURE CODE, s. 111.

COMPANY.

DIVORCE ACT.

HIGH COURTS' CRIMINAL PROCEDURE ACT.

INSOLVENT ACT, s. 42.

INTEREST.

LAND ACQUISITION ACT.

PRIVY COUNCIL, PRACTICE OF.

TAXATION OF BILL OF COSTS.

COSTS—continued.

2. — *Small Cause Court Act (XXVI of 1864), s. 9—Mortgage.*] In a suit by a mortgagee, the prayer of the plaint was for a decree for Rs. 300 with interest, and for foreclosure or sale in default of payment,—*held*, that it was an action within s. 9 of Act XXVI of 1864, and, therefore, the plaintiff was not entitled to costs. *KHETTRAMOHAN CHATTERJEE v. KISORIMOHAN BOSE* - - - 10 C. 27

3. — *Certificate under Act XXVI of 1864, s. 9—Appellate Court, power of.*] Where in an action in the High Court founded on contract a verdict was found for the plaintiff for a sum less than Rs. 1,000, and the Judge, who tried the case, awarded costs without certifying under s. 9, Act XXVI of 1864, that the action was fit to be brought in the High Court,—*held*, that the Court might supply the omission on appeal. *NOBOCOMAR DOSS v. KEWATA MUG* - - - - - x 358

4. — *Suit on decree of Small Cause Court.*] In a suit upon a decree of the Small Cause Court brought by reason of there being no process of that Court whereby satisfaction of its decree could be obtained,—*held*, that the High Court had power to award to the plaintiff his costs of suit. Under the circumstances of the case costs were not given. *MADAN MOHAN BOSE v. LAWRENCE* - - - 10 C. 66

5. — *Defendants, separate appearance of.*] In a suit against several defendants to recover possession of land, one of them stated in defence that he had nothing to do with it, and made good his defence. The other defendants claimed to be entitled to the land, and proved their title. The disclaiming defendant appeared by a separate pleader, and incurred a separate set of costs. *Held*, that the Sudder Ameen rightly awarded a separate set of costs to him, and the Judge had not exercised a sound discretion in modifying the Sudder Ameen's decree, by awarding one set of costs only to all the defendants. *RAMCHANDRA GOSWAMI v. MATILAL BAGCHI* - - - 11 A. C. 169

6. — *Application to file an award—Act VIII of 1859, s. 327.*] Where an application under s. 327, Act VIII of 1859, was considered as a regular suit, the Judge was right in decreeing costs as in a regular suit. *ROY PRIYANATH CHOWDHREY v. PRASANNA CHANDRA ROY CHOWDHREY* - - - - - 11 A. C. 249

7. — *Co-sharers—Separate suits for share of rent.*] Each of two shareholders in a talook sued separately for his share of the rent due from a tenant who held under one kabuliati. *Held*, that no more costs were to be awarded to the plaintiffs than if they had sued jointly. *PYARI MOHAN SINGH v. MIRZA GAZI*, [11 A. C. 337]

8. — *Suit for partition.*] The costs of a suit for partition by one shareholder of a panni talook against his co-sharers, as well as of effecting a partition, must be borne by each party, as such expenses are not caused by any wrongful act of either party, but by the nature

COSTS—continued.

of their tenancy. *SAMASUNDARI DEBI v. JARDINE, SKINNER* - - - - - 111 Ap. 120

9. — *Hindu widow—Partition suit.*] In a suit by a childless Hindu widow for partition of her late husband's estate, from which she alleged that she had been ejected by the defendant, the reversionary heir, the widow consented to a decree for partition, whereby a moiety of the property was allotted to her for the estate of a Hindu widow, and the parties were ordered to pay their own costs respectively. There was nothing in the decree to show that the defendant had been guilty of any misconduct, or that there was any necessity for the suit. An application by the widow that her costs of suit might be paid by the sale absolutely of the share allotted to her was refused. *KISTOKAMINY DOSSEE v. MIETTOONJOY DUTT* - - - - - xi Ap. 35

10. — *Order for payment of costs by person not party to the suit, and after dismissal of suit—Power of Mofussil Courts.*] The plaintiffs brought a suit for the recovery of certain property, and R. and B. being desirous of entering into a transaction for the purpose of assisting the plaintiffs to recover it, agreed, that they should receive one-half the property that might be recovered in consideration of their assistance in recovering it; they thereupon purchased from the plaintiffs for a nominal sum one-half their interest in the property, but instead of taking a conveyance in their own names and joining as plaintiffs in the suit, they took a conveyance in the name of one S., an indigent member of their family, and dependent on them for support, and caused the suit to be brought in the name of S. and the plaintiffs jointly. The Judge found that S. had been put forward by R. and B. in order to save themselves from having to pay the costs of the suits which were brought to establish the claim, in case they should be unsuccessful, and was of opinion that R. and B. were the real plaintiffs in the suit, though acting in the name of S. Two suits had then been brought by the plaintiffs and S., which were dismissed, and decrees for costs given in favour of the defendants; and the Judge ordered that the names of R. and B. should be added to the decrees for costs. *Held*, that though the Judge might have had power to make the order whilst the suits were pending before him, he had no power to make such order after dismissing the suits. Mofussil Courts have no power to make orders *in pænam* against persons who are not parties to the suit, such as is possessed by the Original Side of the High Court. *RAMNIDHY KOONDoo v. AJOODYARAM KHAN* - - - - - xi Ap. 37

11. — *Payment of costs by person not party to suit—Plaintiff's costs.*] Circumstances under which the Court will order costs of the suit, or of parties to the suit, to be paid by third person not parties to the suit. *BAMASUNDARI DAS v. RAMNARAYAN MITTER*, [viii Ap. 65]

COSTS—continued.

12. — The Court will not order a person not on the record to pay the costs decreed against the defendant, when the latter is a real and not a sham defendant, and himself did the wrongful act on which the suit was based, and has an interest in the subject-matter of the suit; and when the plaintiff knew before the trial the circumstances under which he afterwards sought to make such third person responsible for the costs, and might have added him as a defendant on the record. *PRANKUMARI DASI v. ABINASH CHANDRA MOOKERJEE* - - - - - ix 210
See CHUNDER KANT MOOKERJEE v. RAMCOOMAR KOONDOL - - - - - xiii 580

13. — *Scale of costs.* In the Court below a decree was passed in favour of the plaintiff, with costs on scale No. 3. On appeal, the decree as to costs was altered, it being ordered that each party should pay his own costs, to be taxed on scale No. 2. *BULDEO NARAYAN v. SCRYMGEOUR* - - - - - vi 581
See also MILLER v. GOURIPORE COMPANY,
 [viii 285]

14. — *Agreement not to appeal—Privy Council practice—Stay of proceedings—Sum given nomine expensarum.* A fixed sum was given to each respondent *nomine expensarum* in lieu of costs, when an appeal was preferred contrary to an agreement not to appeal, and the proceedings had been stayed. *AMIR ALI v. INDERJIT KOER* - - - - - ix P. C. 400

15. — *Interest on costs—Execution of decree.* The Court, in executing a decree, has no power to allow interest on costs when not mentioned in the decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. *ULFUTUNNISSA v. MOHAN LAL SUKUL,*
 [vi Ap. 33]

16. — *Interest on costs—Costs of translation and printing—Execution of decree of Privy Council.* When on appeal to the Privy Council it was ordered that the decree of the High Court be reversed with £276 12s. 2d. costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree it was held, that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council, and that he was entitled to interest upon those costs, but not to interest upon the said £276-12-2. *MADAN THAKUR v. LOPEZ,*
 [ix Ap. 23]

17. — *Trustees—Separate set of costs.* Trustees will be allowed a separate set of costs on appeal. *PETERS v. MANUK* - - - - - xiii 383

18. — *Compromise of suit by parties out of Court, without knowledge of attorneys—Taxation and payment of costs.* After the filing of the plaint a suit was compromised out of Court by the parties without the intervention or knowledge of the attorneys. The plaintiff's attorney applied to his client for payment of costs, and on his refusal to pay he applied to the

COSTS—continued.

Court, that his bill should be taxed and that his client should thereupon pay it, and the Court granted the application. *ISWAR CHANDRA DUTT v. ISWAR CHANDRA GHOSE* - ix Ap. 19

19. — *Attorney's lien for costs—Compromise of suit by parties—Collusion.* Where the parties to a suit came to a compromise between themselves without the knowledge of the plaintiff's attorney, when the suit was at such a stage that it did not appear that the plaintiff was entitled to recover anything, and there was no proof that he was to receive anything from the defendant on the compromise, or that the compromise was not a *bona fide* one,—held, the plaintiff's attorney was not entitled to have the compromise set aside, on the ground that he might thereby be deprived of his costs. A clear case of fraud and collusion must be made out to entitle the attorney to the interference of the Court. *RAMANATH DUTT v. MATUNGINEE DOSSEE* - - - - - xii 110

20. — *Parties in Court below not made parties to appeal.* In the first Court the Government obtained their costs; the opposite party appealed, but did not make the Government a respondent. On appeal the decree of the first Court was reversed. Held, that the Government not having been made a party to the appeal were entitled to recover their costs in the first Court. *GOVERNMENT v. LALJI SAHU* - - - - - i S. N. xxiii

COSTS, SECURITY FOR.

See CIVIL PROCEDURE CODE, s. 34 AND s. 342.

INSOLVENT ACT, s. 73.

SMALL CAUSE COURT, PRESIDENT-CY TOWNS.

COSTS, TAXATION OF.

See COMMISSION.

COUNSEL.

See ADVOCATE.

COMMISSION.

INSOLVENT ACT, s. 36.

PRACTICE.

RIGHT TO BEGIN.

2. — *Practice as to hearing.* Where the senior counsel was absent when an appeal was opened, the Court allowed him to follow his junior. *DODS v. STEWART* - - - - - viii 340

3. — *References to High Court under s. 434, Criminal Procedure Code (Act XXV of 1861).* In a reference to the High Court under s. 434 of the Criminal Procedure Code, counsel are not heard as a matter of right, but of indulgence of the Court. *ANGELO v. CARGILL* - - - - - ix 417

4. — *Appeal to Privy Council—Agreement by counsel not to appeal—Binding agreement on client.* Where the counsel for the appellant had agreed, at the hearing of the case on appeal before the High Court, that, if the High Court would restrict its judgment to a finding on one of several issues, his client would not appeal to England. Held, that that

COUNSEL—continued.

agreement was binding, and that the appeal could not be heard. *AMIR ALI v. INDERJIT KOER* - - - - - ix P. C. 460

COUNSEL, ADJOURNMENT FOR CONVENIENCE OF.

See PRACTICE.

COUNSEL, GIVING INSTRUCTIONS TO, ON REFERENCE TO HIGH COURT.

See SMALL CAUSE COURT, PRESIDENCY TOWNS.

COURT ESTABLISHED BY ROYAL CHARTER.

See LIMITATION ACT XIV OF 1859, s. 19.

COURT FEES ACT.

See STAMP.

VALUATION OF SUIT.

— (ACT VII OF 1870), Sch. I, art. 11—*Letters of administration.*] Before the passing of the Court Fees Act, the Administrator-General obtained letters of administration to a certain estate, limited until the will should be proved; and the fixed duty prescribed by the Succession Act was paid in respect of such letters of administration. The will was proved, and a petition presented for general letters of administration with the will annexed, after the passing of the Court Fees Act. *Held*, that the fee therein prescribed must be paid on the amount of the property irrespective of the duty paid on the grant of the former letters of administration. *IN THE GOODS OF CHALMERS* - - - - - vi Ap. 137

2. — The Administrator-General obtained letters of administration with a copy of exemplification of probate of the will annexed, and the full *ad valorem* duty prescribed by Sch. I, cl. 11 of the Court Fees Act was paid on the amount of the property. Subsequently, the Administrator-General produced a document referred to in the will of the testator, and obtained an order for letters of administration with a copy of the exemplification of probate of the will annexed, and of the document produced as part of the will, in lieu of the former letters of administration. *Held*, that he was not liable to pay a second *ad valorem* duty. *IN THE GOODS OF MOSSON* - - - vi Ap. 139

3. — *Property subject to a trust*] Where property was conveyed by *T.* to *L.* on trust to pay the income to *T.* for her life, and after her death to hold the property for her children in such manner or form as she should by will appoint, and *T.* afterwards intermarried with *G.*, and shortly afterwards made a will of which she appointed her husband and the trustee of the settlement executors,—*held*, that the *ad valorem* duty prescribed by Sch. I, cl. 11 of the Court Fees Act, was not payable in respect of such trust property. The words of that clause mean property which the deceased was possessed of or entitled to. *IN THE GOODS OF GEORGE*, [vi Ap. 138

4. — *Letters of administration—Trust property—Financial Resolution, 2004, 14th July,*

COURT FEES ACT—continued.

1871.] *A.* and *B.* were brothers joint in estate. *A.* died unmarried, leaving no relative except *B.* *B.* obtained grant of letters of administration of the estate of *A.*, consisting of a half share of certain property, the other half share of which was claimed by *B.* to belong to himself. By Financial Resolution No. 2004, 14th July, 1871, the fees chargeable under Sch. I, art. 11 of the Court Fees Act were remitted in respect of letters of administration relating to "property which a deceased person was possessed of as a trustee for any other person." *Held*, that *B.*'s half share should be treated as trust property, and exempted from the 2 per cent. *ad valorem* fee. *IN THE GOODS OF BRINDA-BUN GHOSE* - - - - - xi Ap. 39

5. — *Letters of administration—Estate of Hindu in hands of deceased daughter's representatives—Trust property.*] On the death of a Hindu lady, who had succeeded to her father's property for the estate of a Hindu daughter, it appeared that certain Government promissory notes, which formed a portion of the father's property, were then standing in her own name. On an application by the sons for letters of administration to her estate, *held*, that, on her death, the grandfather's estate became in the hands of her representatives trust property in respect of which no duty was payable under the Court Fees Act. *IN THE GOODS OF JOYMONEY DOSSEE* - - - - - xiv Ap. 134

6. — *Property on which there is a mortgage or incumbrance—Duty on letters of administration.*] When letters of administration are granted in respect of property which is subject to a mortgage, the value of the property for the purpose of estimating the *ad valorem* duty payable under the Court Fees Act, is the value of the entire property less the amount of the incumbrance. A duty paid on former letters of administration, which were afterwards cancelled, was allowed to be deducted from the amount payable for fresh letters of administration. *IN THE GOODS OF INNES* - - - - - viii Ap. 43

7. — *Letters of administration, duty payable on—Debts due by deceased—Letters limited to collect rents.*] The fee payable for letters of administration under Act VII of 1870, Sch. I, art. 11, is to be calculated on the amount or value of the property in respect of which the letters are sought, without deducting therefrom the debts due by the deceased. Where letters are granted limited for the purpose of collecting the rent of a house, the duty is to be assessed on the value of the house. *IN THE GOODS OF RAM CHANDRA DAS* - - - - - ix 30

8. — *Appointment by will.*] Where a person having a life-interest in a fund, with a general and absolute power of appointment thereover, exercises such power by will, no *ad valorem* fee is payable in respect of such fund under the Court Fees Act. *IN THE GOODS OF ORAM* - - - - - xii Ap. 21

COURT FEES ACT—continued.

9. — *Letters of administration—Doubtful debt.*] The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of letters of administration to such estate. *IN THE GOODS OF BEAKE* - - - - - xiii Ap. 24

—, Sch. I, arts. 11 and 12 — *Trust property.*] The term property in clauses 11 and 12 of Sch. I of the Court Fees Act, includes not only property to which the deceased was beneficially entitled during his lifetime, but also all property which stood in his name as trustee, or of which he was possessed benami for others. *IN THE GOODS OF BERESFORD*, [vii 57

—, Sch. II, art. 1—*Act VIII of 1859, s. 281—Act XXIII of 1861, s. 8—Examination of defendant.*] When the plaintiff, in order to make the proof referred to in s. 281, Act VIII of 1859, chooses to examine the defendant, he must pay for the oath and the cost of reducing the deposition of the witness to writing. It would be otherwise under s. 8, Act XXIII of 1861, in which case the fee is demandable from the applicant. *EDMOND v. NIERSES*, viii Ap. 42

—, Sch. II, art. 1 (a)—*Fees for translations.*] When portions of khatta books are translated, each portion translated is treated as a separate document, and any portion less than a folio is charged for under the Court Fees Act as a whole folio. The portions containing less than a folio are not to be taken together, and charged according to the whole number of folios they contain. *BRAJANATH DHAR v. BHABO MOHAN DHAR* - - - - - vi Ap. 187

—, Sch. II, art. 17—*Suit to set aside order under Act VIII of 1859, s. 246—Stamp.*] A suit, brought under the provisions of s. 246 of Act VIII of 1859 to set aside an order allowing a claim to attached property and releasing the property from attachment, is a suit to try the title and establish the right of the person who brings the suit; and such a suit must be valued according to the value of the property, and cannot be brought upon a stamp of Rs. 10, under art. 17 of Sch. II of the Court Fees Act. *MUFTI JALALUDDIN MAHOMED v. SHOHO-RULLAH* - - - - - xv Ap. 1

—, Sch. II, art. 17, cl. 3—*Suit for declaratory decree—Stamp—Valuation of suit.*] The plaintiff, claiming under a will of the deceased, applied for a certificate under Act XXVII of 1860, but the High Court on appeal refused the same. He now brought a suit alleging that he was in possession of the property of deceased, and asked for "confirmation of right and possession by enforcement of the will, in reversal of the summary order of the High Court." *Held*, that cl. 3, art. 17, of Sch. II of Act VII of 1870, did not apply. This was not a suit to obtain a declaratory decree, where no consequential relief was prayed. *DINABANDHU CHOWDEY v. RAJMOHINI CHOWDRAIN* - - - - - viii Ap. 32

COURT FEES ACT—continued.

2. — *Stamp—Declaratory decree—Substantial relief.*] Where the plaintiffs sued for a declaration that a mutwalli had been guilty of misfeasance, and asked to have her removed from the mutwalliship and themselves appointed in her place, whereby they would have been entitled to a share in the profits of the wakf, *held*, that the fixed stamp fee of Rs. 10 required by cl. 3, Art. 17, Sch. II of Act VII of 1870, was not sufficient; but the plaint should bear a stamp of a value proportionate to the subject-matter of the suit. *DELROOS BANOO BEGUM v. ASHGUR ALLY KHAN*, xv 167

3. — *Stamp—Suit to set aside a deed or will—Declaratory decrees—Consequential relief.*] In a suit for confirmation of possession by declaration of proprietary right, and also to set aside a forged and invalid will, *held*, that the plaintiff sought consequential relief over and above the declaratory decrees prayed for, and therefore the petition of appeal ought to be engrossed on a stamp of proportionate value to the subject-matter of the suit. *JOY NARAIN GIRIE v. GREESH CHUNDER MYTTE*, [xv 178

COURT FEES, RIGHT OF GOVERNMENT TO RECOVER.

See PAUPER SUIT.

"COURT," MEANING OF.

See EVIDENCE ACT, s. 3.

COURT OF WARDS.

See LUNATIC.

2. — *Certificate of administration—Act XL of 1858.*] The Court of Wards is not prevented by Act XL of 1858 from taking an infant and his estate under its protection by reason of a certificate of administration to the estate having been granted by the Civil Court. The Court of Wards has a right to assume charge of the estate although originally it may have refrained from acting. *MADHUSUDAN SING v. COLLECTOR OF MIDNAPORE* - - - - - Sup. Vol. 199

COURT OF WARDS, TENURE CREATED UNDER.

See BENG. ACT IV OF 1870.

COVENANT NOT TO ALIENATE.

See SALE IN EXECUTION OF DECREE.

COVENANT TO RENEW—Settlement—Amulnama.] A. a zemindar, entered into negotiations with Government for settlement of certain lands. Pending the settlement, A. sublet to B. and granted him an amulnama for one year, and covenanted therein that whatever term of settlement he might obtain from Government, he would grant to B. a patta for the corresponding term. The negotiations with A. were broken off, and Government settled with C., on condition that he should abide by the above amulnama. *Held*, that C. was bound by the covenant to renew; the amulnama did not require to be registered. *RADIKA PRASAD CHUNDER v. RAMSUNDER KUR* [i A. C. 7

COVERTURE, PLEA OF.*See* HUSBAND AND WIFE.**CREDITOR, RIGHTS OF, ON ASSIGNMENT BY TRADER.***See* VENDOR AND PURCHASER.**CREDITOR, SUIT BY.***See* ADMINISTRATION, SUIT FOR.**CREDITORS CLAIMING AGAINST BENAMIDAR.***See* BENAMI PURCHASE.**CRIMINAL BREACH OF TRUST.***See* PARTNERSHIP PROPERTY.
PENAL CODE, ss. 405—408.**CRIMINAL COURTS, FUNCTIONS OF.***See* CRIMINAL PROCEDURE CODE (ACT XXV OF 1861), s. 11.**CRIMINAL COURTS, RIGHT TO APPEAR IN.***See* ADVOCATE.
COUNSEL.
PLEADER.**CRIMINAL MISAPPROPRIATION.***See* PARTNERSHIP PROPERTY.

CRIMINAL PROCEDURE CODE (ACT XXV OF 1861 AND ACT VIII OF 1869), s. 11—*Functions of Criminal Courts.* The words "whether for the decision of such cases in the first instance or on appeal, or for commitment to any other Court or officer," in s. 11 of the Code of Criminal Procedure, are not an exhaustive enumeration of the functions of Criminal Courts. *QUEEN v. BAKTEAR MALJARAZ*, [vi F. B. 698]

—, s. 46.

See SENTENCE.
WHIPPING.

—, ss. 47, 48.

See SENTENCE.

—, s. 61.

See ACT XXI OF 1856.

—, s. 62.

See NUISANCE.
ACT XVIII OF 1850.

—, ss. 66, 67.

See COMPLAINT.

—, s. 68.

See COMPLAINT.
MAGISTRATE, POWERS OF.
REVISION.
WARRANT OF ARREST.

—, s. 77.

See WARRANT OF ARREST.

—, s. 133.

See POLICE ENQUIRY.

—, s. 169.

See REVISION.
SANCTION TO PROSECUTION.

—, s. 169—171.

See STAMP ACT X OF 1862.

—, s. 170.

See SANCTION TO PROSECUTION.

—, s. 171.

See CONTEMPT OF COURT.
REMAND IN CRIMINAL CASES.**CRIMINAL PROCEDURE CODE (ACT XXV OF 1861 AND ACT VIII OF 1869), s. 172***See* FALSE EVIDENCE.

JURISDICTION OF CRIMINAL COURT.

—, s. 180.

See POLICE ENQUIRY.

—, ss. 183, 184.

See ABSCONDING OFFENDER.

—, ss. 184, 185.

See REVIEW IN CRIMINAL CASES.

—, s. 188.

See WITNESSES.

—, s. 205.

See EXAMINATION OF ACCUSED.
EVIDENCE.

—, s. 207.

See WITNESSES.

—, s. 219.

See CONTEMPT OF COURT.

—, ss. 227, 228.

See WITNESSES.

—, s. 250.

See DISCHARGE OF ACCUSED.

—, ss. 253, 262, 266.

See WITNESSES.

—, s. 255.

See CHARGE TO JURY.

—, s. 270.

See COMPENSATION TO ACCUSED.
COMPLAINT.

—, s. 273.

See MAGISTRATE, POWERS OF.

—, ss. 282, 283, 290, 293, 298.

See RECOGNIZANCE TO KEEP THE
PEACE.

—, s. 308.

See DAMAGES, SUIT FOR.
DECLARATORY DECREE, SUIT FOR.
JURISDICTION OF CIVIL COURT.
NUISANCE.

—, s. 310.

See JURY.

—, s. 316.

See MAINTENANCE, ORDER OF CRIMI-
NAL COURT FOR.

—, s. 318.

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO.
WITNESSES.

—, s. 320.

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO.

—, s. 366.

See REVISION.

—, s. 370.

See EVIDENCE.

—, s. 375.

See WITNESSES.

—, s. 379.

See ASSESSORS.

CRIMINAL PROCEDURE CODE (ACT XXV OF 1861 AND ACT VIII OF 1869), s. 404.

See ACT XIII OF 1867.

REVISION.

—, s. 405.

See SENTENCE.

—, s. 411.

See APPEAL IN CRIMINAL CASES.

—, s. 419.

See CRIMINAL PROCEDURE CODE (ACT X OF 1872), s. 280.

—, s. 420.

See APPEAL IN CRIMINAL CASES.

—, s. 421.

See SENTENCE.

—, s. 422.

See APPEAL IN CRIMINAL CASES.
REMAND IN CRIMINAL CASES.

—, s. 426.

See CRIMINAL PROCEDURE CODE (X OF 1872), s. 280.
SANCTION TO PROSECUTION.
SENTENCE.

—, s. 427.

See PENAL CODE, s. 457.

—, s. 428.

See SENTENCE.

—, s. 434.

See COUNSEL.
PLEADER.
PRIVATE PROSECUTOR.
RIGHT TO BEGIN.

—, s. 435.

See DISCHARGE OF ACCUSED.
JURISDICTION OF CRIMINAL COURT.
MAGISTRATE, POWERS OF.
PENAL CODE, s. 457.
REVISION.

—, s. 436.

See BAIL FOR APPEARANCE OF PARTY.

—, s. 444.

See BENG. ACT VI OF 1865.

—, ss. 445A and 445C.

See APPEAL IN CRIMINAL CASES.

—, s. 511.

See ATTEMPT TO COMMIT OFFENCE.

— (ACT X OF 1872), s. 44.

See COMPLAINT.

—, s. 67, III. (a).

See JURISDICTION OF CRIMINAL COURTS.

—, ss. 71—88.

See JURISDICTION OF CRIMINAL COURTS.

—, ss. 140, 142, 144, 146, 147.

See COMPLAINT.

—, ss. 171, 172.

See ABSCONDING OFFENDER.

—, s. 209.

See COMPENSATION TO ACCUSED.
COMPLAINT.

CRIMINAL PROCEDURE CODE (ACT X OF 1872), s. 210.

See COMPLAINT.

—, ss. 222 to 230 — *Summary trial, appeal from.*] If on appeal from a summary trial under Chap. XVIII of the Criminal Procedure Code, Act X of 1872, the evidence before the Judge is not sufficient to reasonably satisfy him that the prisoner has been rightly convicted, he ought to acquit him. *QUEEN v. KHERAJ MULLAH* — — — — — xi 33

—, s. 249 — *Witnesses before Committing Magistrate.*] On the trial of a prisoner for the murder of his wife and child, the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate; and the Sessions Judge, purporting to act under s. 249, Act X of 1872, discarded the evidence taken before himself, and grounded his judgment on the evidence given before the Magistrate, and on this evidence convicted the prisoner, and sentenced him to death. On appeal by the prisoner, *held*, that s. 249 did not warrant such a course of proceeding. That section merely authorizes the Court to take a particular statement made by a witness before the Magistrate as the true statement, notwithstanding that it is denied, or a statement inconsistent with it was made by the witness before the Judge, only if the Judge should see that the original statement was worthy of belief, and does not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer. *QUEEN v. AMANULLA* — — — — — xii Ap. 15

—, s. 263 — *Verdict of jury.*] On a trial by jury before a Sessions Judge, the jury returned a verdict of guilty. The Judge disagreed with the verdict, and submitted the case to the High Court. *Held*, that the High Court had power to set aside the verdict of the jury, and to direct an acquittal. S. 263 of the Criminal Procedure Code (Act X of 1872) explained. *QUEEN v. KOONJO LETH* — xi 14

2. — *Exercise of powers of High Court — Verdict of jury.*] The Court should exercise the powers vested in it by s. 263 of the Criminal Procedure Code (X of 1872) only when it finds the verdict of the jury clearly and patently wrong, and only set such verdict aside even if the Sessions Judge disagrees with it, when it is found unsustainable by the evidence. *QUEEN v. SHAM BAGDI* — xiii Ap. 19
QUEEN v. NABIN CHUNDER BANERJEE, [xiii Ap. 20]

QUEEN v. ITWARYA — — — — — xiv Ap. 1

QUEEN v. HURRO MANJI — xiv Ap. 2 note

—, s. 280 — *Enhancement of punishment.*] The High Court on appeal being of opinion that the case was one where no circumstances of mitigation were set forth, and where, without any sufficient reason, the Judge had awarded a punishment which in ordinary cases would be quite inadequate,

**CRIMINAL PROCEDURE CODE (ACT X OF 1872),
s. 280—contd.**

enhanced the punishment, under s. 280, Act X of 1872. *QUEEN v. GOOJREE PANDAY* xi Ap. 3

2. — Circumstances under which the High Court will, on appeal by the prisoner, enhance the punishment under s. 280, Act X of 1872. *QUEEN v. SOFFIRUDDI PALWAR* - xiii Ap. 23

3. — "*Reverse*," — *Criminal Procedure Code (Act XXV of 1861) ss. 419, 426.* The word "*reverse*" in ss. 419 and 426, Code of Criminal Procedure (Act XXV of 1861), ss. 280 and 283 of Act X of 1872, means to make void, to set aside or annul, and not merely to change or turn into the contrary. *QUEEN v. KLAHI BAX* - - - - - Sup. Vol. 459

—, s. 283.

See COMPLAINT.

2. — *Irregularity prejudicing prisoner in his defence.* An omission by a Magistrate to hold a preliminary inquiry on a charge under s. 307 of the Penal Code of attempting to murder, was, on appeal by the prisoner to the High Court, held to be an irregularity which prejudiced the prisoner in her defence, and the proceedings were ordered to be quashed, and a new trial held. *QUEEN v. ITWARYA* - - - - - xi 54

—, ss. 294 and 297—*Revision—Power of High Court—Material error.* Where the High Court sent for the record of a case, and it appeared therefrom doubtful whether the evidence was sufficient to support the conviction, the Court refused to interfere, there being no material error in law or in the proceedings which rendered such conviction illegal and improper. *Per GLOVER, J.*—The power of the High Court under s. 294 of Act X of 1872 is limited to sentences and orders passed by subordinate Courts, as distinct from judgments of such Courts, and a judgment cannot be interfered with (except in cases where the law gives an appeal on the facts), unless it be shown that it is contrary to law. *Per PONTIFEX, J.*—The High Court cannot, under s. 294 of Act X of 1872, interfere with a conviction, unless there has been some material error of law which renders such conviction illegal and improper in law. *IN THE MATTER OF THE PETITION OF BELILIOS,* [xii 249

—, s. 296—*Power of a Sessions Court to order committal of accused discharged by a Magistrate.* An order by a Judge, under s. 296 of Act X of 1872, directing a Magistrate to commit an accused person, who has been discharged at a preliminary enquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot direct a committal for offences with which the accused was in no way charged before the Magistrate. *QUEEN v. TARUCKNATH MOOKERJEE* - x 285

—, s. 297—*Power of High Court—Acquittal—Discharge.* Where the Deputy Magistrate, after hearing two only of the prosecutor's witnesses, though more were present, and without

**CRIMINAL PROCEDURE CODE (ACT X OF 1872),
s. 297—contd.**

examining the prosecutor himself in the presence of the accused, passed a judgment of acquittal under s. 211 of the Criminal Procedure Code, and the Magistrate sent the case up to the High Court under s. 296—*held*, that the Court had no power to set aside the acquittal and order a re-trial. The Court can interfere when a prisoner has been improperly discharged, but not when he is improperly acquitted. *QUEEN v. HATU KHAN* - xii Ap. 22

2. — To justify the High Court in setting aside proceedings on trial and conviction, under s. 297, Act X of 1872, there must be material error,—*i. e.*, such an error as has occasioned a failure of justice (See ss. 283 and 294.) *QUEEN v. RAMKANU* - - xii 253 note

—, ss. 425, 432—*Trial of fact of unsoundness of mind.* Where on the trial of a prisoner by a Sessions Judge, the Judge, entertaining some doubt as to the prisoner's sanity, took the evidence of the Civil Surgeon, and himself decided that the prisoner was of sound mind and capable of making his defence, whereupon the trial proceeded, and the prisoner was convicted,—*held*, that the conviction must be set aside, and a new trial directed reading ss. 232 and 425 of the Criminal Procedure Code together. The preliminary issue of soundness of mind or otherwise ought to have been tried by the jury and not by the Judge personally. *QUEEN v. BHEEKO KALWAR,* - - - x Ap. 10

—, ss. 435 and 436—*Sub-Registrar—Offence during judicial proceeding—Penal Code, s. 228.* A. was charged before an Assistant Magistrate by a Sub-Registrar with having committed an offence under s. 228 of the Penal Code, and fined. *Held*, that the Sub-Registrar should have tried the matter himself under ss. 435 and 436 of the Criminal Procedure Code, and as the Magistrate acted without jurisdiction, the order must be quashed. *IN THE MATTER OF THE PETITION OF SARDHARI LAL,* [xiii Ap. 40

—, s. 455 and Sch. III.

See FALSE EVIDENCE.

—, s. 518

See NUISANCE.

—, ss. 521—529.

See NUISANCE.

—, s. 530.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO.

2. — *Mode of recording evidence—Dispute likely to cause breach of the peace.* In an enquiry under s. 530, Act X of 1872, as a preliminary to an order relative to land about which there is a dispute likely to cause a breach of the peace, the evidence should be recorded by the Magistrate in the manner provided by s. 334. *KHETTERMONEE DOSSEE v. SREENATH SIRCAR* - - - - - xi Ap. 5

—, ss. 536, 537.

See MAINTENANCE, ORDER OF CRIMINAL COURT FOR.

CRIMINAL TRESPASS.*See* TRESPASS.**CROPS, GROWING.***See* SMALL CAUSE COURT, MOFUSSIL.**CROPS, SEIZURE OF.***See* WRONGFUL DISTRAINT.**CROPS, SUIT FOR SHARE OF VALUE OF.***See* SMALL CAUSE COURT, MOFUSSIL.**CROSS DECREE.***See* SET-OFF.

2. — *Satisfaction of decrees by agreement—One decree afterwards set aside.*] By mutual agreement two decree-holders entered up satisfaction in respect of their cross-decrees. Nevertheless, one of them appealed from the decree passed against him and obtained its reversal. He then applied to issue execution on his cross-decree. *Held*, that the application could not be entertained as satisfaction had been entered. The grounds upon which the application could have been entertained discussed. *GUPINATH ROY v. DINABANDHU NANDI* iii Ap. 62

CROSS-EXAMINATION.*See* WITNESSES.**CULPABLE HOMICIDE.***See* CHARGE TO JURY.*MURDER.*

2. — *Provocation—Penal Code, s. 300.*] Culpable homicide, though committed under provocation, will amount to murder, unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause. *QUEEN v. HARI GIRI* — i A. Cr. 11

3. — *Grave provocation.*] The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held*, that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder. *QUEEN v. RAMTAHAL KAHAR* — iii A. Cr. 33

4. — *Grave and sudden provocation—Murder.*] Culpable homicide not amounting to murder is when a man kills another on being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder. *QUEEN v. YASIN SHEIKH*, iv A. Cr. 6

CULTIVATING RYOT.*See* RIGHT OF OCCUPANCY.**CUMULATIVE SENTENCE.***See* WHIPPING.**CUSTODY OF CHILD.***See* MINOR.**CUSTODY OF CHILD—continued.**

2. — *Guardian—Act IX of 1861—Marriage of Mahomedan mother with Christian in Mahomedan form.*] A child, the offspring of a Christian marriage, was living after her father's death under the protection of her mother. A married man, a Christian, came to live with her mother, and, in order to legalize their intercourse, he and the mother became Mahomedans, and were married in Mahomedan form. About three years after, when the child had attained the age of fourteen, some of her relatives applied for and obtained an order, under Act IX of 1861, that the girl be removed from the guardianship of the mother and her second husband and placed under a Christian guardian. The girl deposed that she wished to remain with her mother and to become a Mahomedan. Special leave having been given to appeal to the Privy Council, the order was upheld. *SKINNER v. ORDE* — — — — — x P. C. 125

CUSTODY OF CHILDREN.*See* DIVORCE ACT.**CUSTODY OF WIFE.***See* MAHOMEDAN LAW, CUSTODY OF WIFE.**CUSTOM.***See* HINDU LAW, CUSTOM.*HUNDI.**MAHOMEDAN LAW, PRE-EMPTION.*

2. — *Land separated from estate by change in course of river—Evidence.*] When a party claims land separated from his estate by a change in the course of a river upon the ground of immemorial custom, he must prove such custom. The canoongo papers are not sufficient evidence to prove immemorial custom. The proceedings shewing that such custom obtains on the banks of one river, will be no evidence to prove that it obtains on the banks of another. *RAI MANIK CHAND v. MADHORAM* — — — — — iii P. C. 5

See also BISSESSURNATH v. MAHARAJAH MOHESAR BUX SINGH — — — — — xi P. C. 265

3. — *Written contract.*] Custom cannot affect the express terms of a written contract. *INDUR CHANDRA DUGAR v. LACHMI BIBI*.

[vii 692]

CUSTOM, EVIDENCE OF.*See* EVIDENCE ACT, s. 32.**CUTTACK, TENURES IN.***See* ACT X OF 1859, ss. 15 & 16.**DAMAGE OCCASIONED BY OVERFLOW OF TANKS.***See* ZEMINDAR, DUTY OF.

DAMAGES, MEASURE OF—Charter-party.] The plaintiff entered into a contract of charter-party with the defendants, whereby it was agreed between them and defendants "acting for the owners" that "the steamer *Atholl*, now on her passage to Calcutta, being tight, staunch, and strong, &c., shall receive on board from the charterers a complete cargo of merchandize, to consist of 700 tons dead weight

DAMAGES, MEASURE OF—continued.

&c., and being so laden shall therewith proceed to London, with liberty to call for any legal purpose at any intermediate port or ports, &c.; freight to be paid on the above cargo on right delivery of the same at and after the rate of £4 2s. 6d. per ton. Charterers to have the option of cancelling the charter-party, if the steamer has not arrived in Calcutta on the 15th April, 1871." The defendants signed the charter-party as "agent of steamer *Atholl*." The steamer was not, at the time the charter-party was entered into, on her way to Calcutta, being then in the port of London, and she did not start for some days after the date of the charter-party. She touched at Madras and Colombo on her way, and did not arrive in Calcutta until 11th April. Rates of freight having declined since the middle of March, at which time, it was alleged, the steamer ought to have arrived, the plaintiffs sued the defendants for damages. *Held*, the defendants were liable. The measure of damages was the difference between the value the steamer would have been to the plaintiffs as an instrument for earning freight at market prices, if she had been put at their disposal at the time when she ought to have been under the contract, *i. e.*, a fortnight or three weeks earlier, and what she was worth to them in the same view at the time when she actually was delivered. *SCHILLER v. FINLAY*, viii 544

2. — *Breach of contract in not delivering timber.*] The plaintiff brought a suit at Tonghoo in British Burmah to recover possession of certain timber, which he alleged the defendants had wrongfully, and in collusion with the Burmese Governor of Ninghan, taken out of his possession in foreign territory and removed to Tonghoo. The defendants stated that they had acquired the timber from the Governor of Ninghan in terms of an agreement between them and the Burmese Government. It appeared that the Governor of Ninghan had confiscated the plaintiff's timber in contravention of a royal mandate. After the institution of the suit, the defendants removed the timber from Tonghoo to Rangoon. The Court below having fixed the price of the timber at Rangoon as the alternative damages in case of nondelivery, the High Court refused to interfere with such award. *BOMBAY BURMAH TRADING CORPORATION v. MIRZA MAHOMED ALI SHERAGEE* - - - i 345

3. — *Wrongful seizure in execution of decrees.*] In execution of a decree against his judgment-debtor, the defendant caused the cattle of the plaintiff, a stranger, to be seized and taken. The plaintiff filed his claim under s. 246, Act VIII of 1859, which was allowed. Subsequent to the admission of the claim, but before the order for release of the cattle, three of the bullocks died. The plaintiff sued for damages consequent on the seizure of the cattle, and for the value of the three bullocks which had died during the time they were in the custody of the officer of the Court. *Held*, that the defendant was liable to the plain-

DAMAGES, MEASURE OF—continued.

tiff for damages sustained by him in consequence of the seizure and detention of the cattle, — *i. e.*, for a sum sufficient to cover what would have been plaintiff's expenses for hiring bullocks to cultivate his land. *SURJAN BIBI v. SARIATULLA* - - - iii A. C. 413

DAMAGES, SUIT FOR.

See ACT XVIII OF 1850.

CONTRACT.

CONTRACT ACT, s. 73.

JURISDICTION OF CIVIL COURT.

RAILWAY COMPANY.

RES JUDICATA.

SPECIAL APPEAL.

WITNESSES.

2. — *Interest in land — Right of suit.*] A. erected an embankment across a river, in consequence of which lands let by B. to ryots were overflowed, and the crops lost. The ryots paid rent to B. only when crops were reaped from the lands. *Held*, that B. had such an interest as to entitle him to sue A. for damages. *RAM CHANDRA JANA v. JIBAN CHANDRA JANA*, [i A. C. 203

3. — *Infringement of right—Actual loss, proof of.*] Proof of infringement of a right, without proof of actual loss does not necessarily entitle a plaintiff in this country to a verdict for nominal damages. *NABAKRISHNA MOOKERJEE v. COLLECTOR OF HOOGHLY*, [ii A. C. 276

4. — *Infringement of right — Cutting timber.*] Where one acquires, by license, an exclusive right to cut and to authorize others to cut timber in a forest, such right does not vest in him the timber in the forest. He might thereby have a right to recover damages against any person who, by cutting timber, should interfere with his exclusive right, but that would not vest in him the timber so cut by others. *SNADDEN v. MAHWINE*, ii A. C. 292

5. — *Use of water-rights—Injury to neighbouring land.*] A suit for damages will lie against a proprietor who pens back the water of a stream by erecting a bund upon his own land, so as to inundate the land of his neighbour, without his license and consent. *BECHARAM CHOWDHEE v. PUHURNATH JHA*, ii Ap. 53

6. — *Compensation—Responsibility of each member of common assembly — Duress.*] *Held*, that in a suit for compensation for damage done to property, each and every one of the persons was equally responsible to make compensation for the loss sustained, when he happened to be a part of the common assembly and executed a common purpose, and that each one was not liable only in proportion to his share of the plunder received or of the damage done by him. Coercion to form a member of the assembly, or bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. *GANESH SINGH v. RAM RAJA* - - - iii P. C. 44

7. — *Assessment of damages — Practice.*] In a suit for recovery of damages, the Court

DAMAGES, SUIT FOR—continued.

which tries the case must, before passing a final decree, assess the damages, and not leave them to be assessed in execution of the decree. The practice on the Original Side of the Court as to assessing the amount of the damages discussed. *MANIRAM v. BIBI MASHIHUN*.

[iv Ap. 66]

BINDA BIBI v. LALA RAMSARAN SINGH.

[i S. N. xxiii]

8. — *Remoteness of damages—Charter-party.*] The plaintiffs chartered a ship of the defendant, and by the charter-party it was stipulated that the said ship, being tight, staunch, and strong, should receive from the plaintiffs a full cargo of rice or grain, and being so loaded should therewith proceed to St. Denis, the freight to be paid there on right delivery of cargo. The penalty for nonperformance of the charter-party was to be the estimated amount of freight. The plaintiffs began to load on May 3rd, and continued doing so until June 10th, having then shipped very nearly the full cargo; they then stopped loading in consequence of a notice from the defendant that the ship was leaking. In consequence of the leakage the cargo had to be shifted, and a portion of it found to be damaged had to be replaced after the leak was stopped. The charges of shifting the cargo and the cost of the cargo substituted were paid by the defendant. Considerable delay occurred in consequence of the leak, and the loading was not completed until the end of July. On May 28th, when the plaintiffs had loaded a portion of the cargo, and had obtained bills of lading, they drew a bill of exchange at sixty days for the value of the cargo covered by the bills of lading on their agent at St. Denis, which they sold to the Comptoir d'Escompte de Paris, hypothecating the cargo for the amount of their draft. Other similar drafts were subsequently drawn and sold. When the plaintiffs received notice of the leakage, they, in anticipation of the delay which would occur in consequence, arranged with the Comptoir d'Escompte that the bills should not be forwarded forthwith, but should be held by the Comptoir d'Escompte, and renewed by the plaintiffs on the completion of the loading, the plaintiffs paying interest on the bills in the meantime at 9 per cent. per annum. On renewing the bills the plaintiffs, in consequence of the difference in the rate of exchange, were out of pocket Rs. 400. In an action against the owner for breach of the charter-party in not supplying a ship tight, staunch, and strong, as stipulated, the plaintiffs sought to recover, as damages arising out of such breach of the charter-party, the interest paid by them on the drafts in pursuance of their arrangement with the Comptoir d'Escompte, the sum they had to pay on renewing the bills, a further sum for interest on bills they could not negotiate in consequence of not being able to obtain bills of lading from the defendant, and the value of the stamps on the bills which had been cancelled in pursuance of the plaintiffs' arrangement with the Comptoir

DAMAGES, SUIT FOR—continued.

d'Escompte. *Held*, that such damages were too remote. **ROBERT AND CHARRIOL v. ISAAC**, [vi Ap. 30]

9. — *Remoteness of damages—Breach of covenant in not giving lessee possession.*] In a lease for a period of nine years, without payment of salami, entered into between A. and B., A. bound himself by the following covenant:—"In the event of B. not being put in possession of the leased premises, A. will have to make good anything in the shape of *khisara* or *naksan* (loss) to which B. may be put in consequence." On A. failing to put B. in possession of the premises mentioned in the lease, B. brought a suit against the party in possession, but failed to recover possession. In a suit by B. against A. for recovery of damages for breach of contract, measuring the amount of damages at the expenses he had to incur in the suit for possession, and also the whole of the profits which he expected to derive from the lease, *held*, that the plaintiff was entitled to recover only nominal damages. **MAHOMED ISA KHAN v. KISHO LAL**, [vi Ap. 44]

10. — *Criminal Procedure Code (Act XXV of 1861), s. 308, order under.*] Where a Magistrate has made an order under s. 308 of Act XXV of 1861, the party aggrieved thereby cannot sue the parties who instituted the proceedings before the Magistrate, for damages, unless he can show that, in taking such proceedings, they were actuated by malicious motives against him, or intended wrongfully to injure him. **CHINTAMANI BAPOOHA v. DIGAMBAR MITTER** — — — ii S. N. xv
HARAPRASAD ROY CHOWDHRY v. DIGAMBAR MITTER — — — ii S. N. xv

DAMAGES, SUIT FOR, AGAINST DECREE-HOLDER BY CO-SHARER IN PROPERTY SOLD.
See SALE IN EXECUTION OF DECREE.

DAUGHTER, APPOINTMENT OF.

See HINDU LAW, CUSTOM.

DEAF AND DUMB PERSON.

See HINDU LAW, INHERITANCE, EXCLUSION FROM.

DEATH OF JUDGE BEFORE JUDGMENT.

See JUDGMENTS.

2. — *Rehearing of case.*] When a Judge dies after hearing and deciding a case, the only record of his decision being an entry in the Court order-book, it is not competent to any co-ordinate Court to take up and rehear the case; but the High Court will, on the ground of want of record of reasons for the decision, reverse the order and remand the case for rehearing. **SUKRAM v. KALA KAHAR** — — — iii A. C. 105

DEATH OF PARTY INSTITUTING PROCEEDINGS IN INSOLVENCY.

See INSOLVENT ACT.

DEATH, PRESUMPTION OF.

See HINDU LAW, PRESUMPTION OF DEATH.

DEBTOR AND CREDITOR.*See* ATTACHMENT.**EXECUTION OF DECREE.**

2. — *Composition payment—Adjustment of claims.*] The plaintiff, a creditor of the late Rajah Chatpal Sing, accepted, from the Collector in charge of the estate, a composition payment in adjustment of his claims. *Held*, that he could not sue the Ranees, nor the infant son of the Rajah, on a contract or bond for payment of the balance. *JAYRAM GIR v. RANI SHIURAJ KOER* - - - - - ii P. C. 98

3. — *Arrangement between decree-holder and one of several judgment-debtors.*] *Held*, that no arrangement between the decree-holder and one of the judgment-debtors would affect the interest of a co-judgment-debtor unless by express consent. *BHAIRABCHANDRA MADAK v. NADYAR CHAND PAL* iii A. C. 357

DEBTOR, ARREST AND DISCHARGE OF.*See* EXECUTION OF DECREE.**DEBTOR, DISCHARGE OF.***See* SUBSISTENCE MONEY.

CIVIL PROCEDURE CODE, s. 281.

DEBTS INCURRED FOR FAMILY PURPOSES.*See* HINDU LAW, JOINT FAMILY.**DEBTS OF TESTATOR.***See* HINDU LAW, DEBTS OF TESTATOR.**DEBTS, PROOF OF.***See* ADMINISTRATION, SUIT FOR.**DEBUTTER PROPERTY.***See* HINDU LAW, ENDOWMENT.**DECEASED PERSON, EXECUTION OF DECREE AGAINST.***See* CIVIL PROCEDURE CODE, s. 210.**DECISION OF APPEAL BENCH HOW FAR BINDING.***See* APPEAL BENCH.**DECISION TO GOVERN SIMILAR SUITS BY SAME PARTY.***See* APPEAL TO PRIVY COUNCIL.**DECLARATION OF NULLITY OF MARRIAGE.***See* DIVORCE ACT.**DECLARATORY DECREE, SUIT FOR.***See* COURT FEES ACT.LIMITATION ACT XIV OF 1859,
s. 1, CL. 16.

2. — *Enhancement of rent.*] The plaintiff filed a suit for rent at an enhanced rate under Act X of 1859. The Court of first instance dismissed the case on the ground that the defendants had shown that the tenure was not liable to enhancement. On appeal to the Judge, the plaintiff's suit was dismissed on the ground that he had not proved service of notice, but a declaratory decree was given that the tenure was liable to enhancement. *Held*, that the Judge should simply have dismissed the suit; Act X of 1859 gives him no power to make such a declaratory decree. *NARAKANT MAZUMDAR v. RAJA BARADAKANT ROY* - - - - - iii Ap. 31

DECLARATORY DECREE, SUIT FOR—contd.

3. — *Suit for enhancement without notice*] Plaintiff sued for arrears of rent at enhanced rates without notice. *Held*, that the plaintiff was not entitled to recover rent at the enhanced rate, but the question as to the liability of the tenure having been fully tried, he was entitled to a decree declaratory of his right to enhancement. The Court had no power in this suit to try the validity of the lakhiraj tenure set up by defendant as to some of the land; plaintiff should have proved that it was his mal land, and that the defendant had paid rent for it. He had failed to do so, and the Court refused, therefore, to declare his right to enhance the rent of such land. *GUMANI KAZI v. HARIHAR MOOKERJEE*, [Sup. Vol. 15

4. — *Suit for declaration of title to land with a view to enhance the rent.*] A declaratory decree may be made only where the declaration of right may be the foundation of relief to be got somewhere. Thus, a suit to establish a title to land, with a view to taking proceedings in the Collector's Court under Act X of 1859 to enhance the rent, is one in which a declaratory decree may be made. The Judicial Committee will not on light grounds interfere with the exercise by a High Court of its discretion in granting a declaratory decree, the suit being one in which a declaratory decree may be made. *SADUT ALI KHAN v. ABDUL GUNNEY, AND ABDUL GUNNEY v. ZAMOORUDONISSA KHANUM*, xi P. C. 203

5. — *Civil Procedure Code, s. 15.*] No declaration of right can be made in a suit under s. 15, Act VIII of 1859, unless the plaintiff can show that there is some relief which the Court can give. *BAIJ NATH CHATTERJEE v. LAKHI MANI DEBI* - v 514 note

6. — *Held* by JACKSON, J., that in a suit for declaration of title, defendants must have given a cause of action by impugning it antecedently to plaint filed, even though their written statement be hostile. *COLVIN COWIE v. ELIAS* - - - - - ii A. C. 212

7. — *Exclusion from somaj—Jurisdiction of Civil Court—Reg. III of 1793, s. 8.*] In a suit for a decree declaratory of the right of a person to the membership of a somaj (society), upon the allegation that the other members have excluded him from the somaj, — *held*, that as such exclusion neither deprived him of caste, nor affected any right of property, it is not cognizable by the Civil Court. The members of a society are the sole judges whether a particular person is entitled to continue as a member or not. S. 8, Regulation III of 1793, commented on. *SUDHARAM PATAR v. SUDHARAM* - - - - - iii A. C. 91

8. — *Suit for lands wrongly marked on survey map.*] A suit will lie for a declaration of title to certain lands which have been erroneously marked on the survey map as belonging to the defendant. *SHIB JATON ROY v. PANCHANAN BOSE* - - - - - iii Ap. 55

DECLARATORY DECREE, SUIT FOR—*contd.*

9. — *Suit for declaration of title as mortgagee.* On attachment of certain property in execution of a decree, A. preferred his claim under s. 246, Act VIII of 1859, on the ground that he held a mortgage thereof from the judgment-debtor. Thereupon an order was passed for sale of the property subject to the mortgage. B. afterwards claimed the same property as his absolute estate, and his claim was allowed, and the property released from attachment. A. was not a party to these proceedings. *Held*, that A. could maintain a suit against B. for a declaration of his title as mortgagee. *GABIND PRASAD TEWARI v. UDAI CHAND RANA* - - - vi 380

10. — *Anticipation of injury—Cause of action.* A suit was brought against the plaintiff by his tenants, for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant, in the course of that suit, presented a petition to the Court, in which he stated that he was the owner of the land on which the crops attached had been raised. The plaintiff brought the present suit for a declaration of his title and confirmation of possession, alleging that the defendant's statement affected his (plaintiff's) title by throwing a cloud over it. *Held*, there was no cause of action. *Per* PAUL, J.—A suit merely in anticipation of a threatened ejectment will not lie. There must be something in the case either in the nature of an invasion of some right, or in the shape of an impediment or obstacle in the way of full enjoyment of proprietary right, to found a claim to a declaratory relief; but a mere allegation, or a mere threat without action taken or founded upon it, will not be sufficient to entitle a party to a declaration of his title. *JAN ALI v. KHONDKAR ABDUR KHUMA* - - - vi 154

11. — *Suit to set aside order of Magistrate under Act XXV of 1861, ss. 308 to 315—Jurisdiction of Civil Court.* The plaintiff built a bridge over a certain *khal* (canal), which was removed by order of the Magistrate under Chapter XX of the Criminal Procedure Code; the defendant, it was alleged, set the Magistrate in motion. The plaintiff now sued the defendant for a declaration of his right to erect the bridge in question, and to have the order of the Magistrate set aside. *Held*, that no such suit would lie. The Judge in the Court below held, that the suit would lie to try the plaintiff's right to erect a bridge over the *khal*. *Held* on appeal, the suit ought to have been dismissed. *MADHAB CHANDRA GUHO v. KAMALA KANT CHUCKERBUTTY* - - - vi 648

12. — *Suit by reversioner for declaration of right—Cause of action.* A., a Hindu infant disappeared and had not since been heard of. In a suit brought within twelve years from the date of his disappearance by the next kin for a declaration of right, and alleging waste by those in possession, and an apprehension that if the infant should not return within twelve years he the plaintiff would be barred by

DECLARATORY DECREE, SUIT FOR—*contd.*

limitation, *held*, there was no cause of action. *GURU DAS NAG v. MATILAL NAG* - vi Ap. 16

13. — *Suit by reversioner—Cause of action.* A. brought a suit against C. and D., alleging that he was an heir-expectant upon the death of B., a Hindu widow in possession of an estate, and as such sought for a declaration of title, and to have a certain conveyance of this estate, said to have been executed by C. in favour of D., set aside as affecting A.'s future interest, without charging any act of waste or injury to the property which might affect his rights as reversioner. *Held*, that A. had disclosed no cause of action against C. and D. *SURAJ BANSI KUNWAR v. MAHIPAT SINGH*, [vii 669]

14. — *Alienation by Hindu widow—Reversioner.* A suit lies by a reversioner to declare that an alienation by a Hindu widow will not be binding upon him after her death. A suit is not to be dismissed on the ground that the plaintiff seeks to set aside such alienation, but the Court will grant him such relief as he is entitled to. *SHEWAK RAM ROY v. MOHAMMED SHAMSUL HODA* - - - iii A. C. 169

15. — *Suit to set aside deed—Reversioner.* A Hindu died, leaving a widow, two daughters R. and P., and a grandson B. by his daughter R. The widow took possession of the estate and executed an *ikrarnama*, wherein, after reciting that she was in possession "without the co-parcenary of any one," she declared that "B., the grandson of me the declarant, is the heir of my late husband and of me the declarant," and that all the property was "the right of B. as aforesaid," and continued:—"During the life of me the declarant I am in possession without the co-shareship of any one, and will continue to be so; after my death B. will get possession of the whole of the movable and immovable properties appertaining to the estate of my late husband. No one else has the right or demand to the same; therefore, these words have been written and given as an *ikrarnama* that it may be of use when occasion arises." Under the *ikrarnama* proceedings were completed for mutation of names in favour of B. Subsequently to the execution of the *ikrarnama* P. gave birth to the plaintiff, and shortly afterwards died. The plaintiff, on attaining his majority, and during the life of the widow and R. brought a suit against B. to have the *ikrarnama* set aside and declared void as against him, and for a declaration of his right to a moiety of the estate of his grandfather on the death of the widow. *Held*, that he had no cause of action. *BEHARY LALL MOHURWAR v. MADHO LALL SHIR GYAWAL* - - - xiii 222

16. — *Suit by reversioner in lifetime of widow to set aside invalid adoption.* In a suit by the reversionary heir in the lifetime of the widow to have an alleged invalid adoption made by her set aside, and his right to certain property declared, the Court refused to make such a declaratory decree. *BROMOMOYEE v. ANAND LALL ROY* - - - xiii 225 note

DECLARATORY DECREE, SUIT FOR—*contd.*

17. — *Suit to ascertain shares in family property.*] Where there is a dispute as to the shares of the several members of a family in a family property, the possession of which is undisturbed, a suit will lie to ascertain the shares of the different members. In a suit for a declaratory decree, it is not necessary to allege any overt act which may give rise to relief in the shape of damages or a decree for possession. *BHAGWAN SINGH v. MITARJIT SINGH* - - - viii 882

18. — *Cause of action—Suit to set aside registered deed.*] A suit will lie to set aside a registered deed on the mere allegation that it is a forgery. *FAKIR CHAND v. THAKUR SINGH* - - - - - vii 614

19. — *Forged deed.*] The defendant had unsuccessfully intervened in a suit between landlord and tenant, setting up a lease as middleman. *Held*, that the landlord was entitled to sue in the Civil Court to have such lease declared fictitious. *RAGHUBAR CHOWDRY v. BHAIKDHARI SINGH* - - - - - iii Ap. 48

20. — *Suit to declare deeds forged.*] In a suit for a declaratory decree that certain pattas put forward by the defendants in a suit for enhancement were forged, and calculated to injure the interests of a minor, whom the plaintiff as guardian represented, — *held*, there was no cause of action. *OMAR SALMIA BIBI v. LAKHI PRYA DEBI* - - - - - vii 617 note

21. — In a suit for declaration of right of possession to certain lands and to set aside alleged fraudulent pattas, which the plaintiff alleged had been executed by the defendant with a view to put an obstacle in the way of his attaining his right, but it was not shown that they had made any actual attempt to disturb the right of occupancy which it was found the plaintiff had, — *held*, that the plaintiff did not disclose a sufficient cause of action to enable the Court to make a declaratory decree in favour of the plaintiff. *UDAI CHANDRA MANDAL v. AHMEDULLA* - - - - - vii 616 note

22. — Where a petition was presented by A. under s. 84, Act X of 1866, for registration of a deed, and the deed was duly registered, a plaintiff filed against A., in which the plaintiff simply complained that A. had executed the deed fraudulently, and obtained registration of it, was *held* to show no cause of action, no act of A. having been shown to use the deed to the plaintiff's injury. *RAM CHANDRA PAL v. BECHARAM DEY* - - - - - viii Ap. 28 note

23. — *Suit to declare registered document forged—Jurisdiction of Civil Court.*] Under s. 84 of Act XX of 1866, the District Judge ordered, without taking evidence, the registration of a document which had been opposed on the ground that the execution of it had been obtained fraudulently and by putting the executant under duress. The executant brought a civil suit against the party in favour of whom the document had been drawn, for a declaration that the document was not genu-

DECLARATORY DECREE, SUIT FOR—*contd.*

ine, and was invalid and inoperative. *Held*, that the Civil Court had jurisdiction to try the genuineness of a registered document; that the registration of a document, the execution of which was obtained by improper means, affecting the property of the executant, is a good cause of action on which to ask for a declaratory decree. *PRASANNA KUMAR SANDYAL v. MATHURANATH BANERJEE*, viii Ap. 26

24. — *Refusal to register—Suit for declaration of title under unregistered deed—Specific performance.*] A. brought a suit in the Munsif's Court against B. and C., alleging that they had sold outright to him by *saf-kobala* certain landed property for Rs. 300, which was duly paid when the *kobala* was executed; that possession was given to him; that B. and C. set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money had not been embodied in the deed, and that part of the consideration-money had not been paid; that, therefore, the Registrar refused to register the deed; that in fact there was no such stipulation as alleged by B. and C., and that the whole of the purchase-money was paid. It was stated in the plaint that the suit was brought to set aside the fraudulent objections, and to establish the full title of A. as purchaser. *Held* (MITTER, J., dissenting), that the suit would not lie, the unregistered deed could not be admitted in evidence, nor parol evidence given of the contract under which A. alleged he acquired his title. *RAHMATULLA v. SARIATULLA KAGCHI* - - - - - i F. B. 58

25. — *Suit for maintenance—Raising issues not raised by pleadings.*] In a suit by a Hindu widow for a declaration of her right to maintenance out of her husband's estate which had been mortgaged to the defendant by the heir, the plaintiff prayed "that the rights of the plaintiff over the estate of her husband by way of maintenance, and for the expenses attendant on the marriage of her daughters, might be ascertained and declared; that it might be declared that the defendant took the mortgage subject to the plaintiff's right to maintenance and right to such expenses as aforesaid; that for such purpose all proper accounts might be taken; for an injunction; and such further or other relief as might be necessary." No specific sum was asked for maintenance, nor was it stated on what portion of the estate the maintenance was sought to be charged, nor that the defendant took with notice of the plaintiff's assertion of her rights. The lower Court held, that the suit ought to be dismissed as praying only for a declaration of right. No alteration in the form of the suit or in the issues in this respect was proposed for the plaintiff. *Held* on appeal, that the Judge ought not to have dismissed the suit, but to have framed issues for the purpose of determining what should be allowed for the maintenance of the plaintiff and the expenses of the marriages, if the plaintiff should be found

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entitled to them. *NISTARINI DAS v. MAKHAN-LAL DUTT* - - - - - ix 11

26. — *Suit to set aside deeds giving and receiving in adoption.*] A declaratory decree cannot be made, unless the plaintiff would be entitled to consequential relief if he asked for it. It is discretionary with a Court to grant a declaratory decree, and the Courts in India ought to be most careful in exercising such discretion. *A.*, widow of a Hindu, sued *B.* as father and guardian of *C.* to have it declared that the deeds executed by *A.* and *B.*, one of giving *C.* in adoption, the other of receiving him in adoption, were null and void, on the ground that they were agreements to give and take in adoption, and that *B.* did not give his son according to agreement. *Held* (reversing the decision of the Courts below), that such suit was not maintainable. *SHREENARAIN MITTER v. KISHEN SOONDERY DASSEE* - xi P. C. 171 Reversing decision of High Court, ii A. C. 279.

27. — *Right to appoint ghatwal.*] In a suit by the Government in which the plaintiff claimed the right "to reinstate a ghatwal in possession of a certain estate as being a ghatwal tenure liable to be appropriated to the use of the ghatwal for the time being, by setting aside a patni talook collusively created by the defendants," it was found that no right of the Government had been infringed by the creation of such patni talook, which the defendant had a right to make, and the Government was *held* not to be entitled to a bare declaration of right. *ANAND KUMARI v. GOVERNMENT* - - - - - ix 16 note

28. — *Thakbust map—Error in—Omission of allegation of injury or loss.*] Where a plaintiff in a suit for declaration of title merely alleged that a certain thakbust map was erroneous, and did not state that any injury had occurred to the plaintiff in consequence of the error, the plaintiff was *held* to disclose no cause of action. *PRAN BANDEHU CHATTERJEE v. MADHUSUDAN PATRA* - - - xiii Ap. 12

29. — *Consequential relief.*] The words of s. 15, Act VIII of 1859, are to be interpreted as giving a right to obtain a declaration of title only in those cases in which the Court could have granted relief if relief had been prayed for. A suit by a party in possession for a declaration of title and to set aside, not any deed nor any act of the defendant, but a mere allegation on his part that he holds under a certain tenure, is not maintainable. *NILMONY SINGH DEO v. KALEE CHURN BHUTTACHARJEE*, [xiv P. C. 382

30. — The words of s. 15, Act VIII of 1859, must be construed upon the principles and by the light of the decisions of the English Courts of Equity upon the 50th section of 15 and 16 Vict., c. 86, which is in similar terms. The effect of these decisions, taken in conjunction with the decisions of the Privy Council, in construing the provisions of the Indian Act, is, that a declaratory decree is not to be

DECLARATORY DECREE, SUIT FOR—contd.

made unless there is a right on the part of the plaintiff to consequential relief, which, although not asked for, might, if asked for, have been given, or unless the declaration of right may be made the foundation of relief to be had in another Court. The plaintiff, purporting to be the next heir, brought a suit against the life-tenant of a zemindari, and made another claimant to the succession to the zemindari a defendant in the suit. The plaintiff prayed for a decree declaratory of the plaintiff's right to succeed on the death of the zemindar, and made allegations of waste, in respect of which he asked relief. *Held*, that even if the plaintiff had proved the alleged acts of waste, which he had not done, there was not a right to consequential relief which would entitle him to a declaratory decree. *STRIMATHOO MOOTHOO VIGIYA RAGHOONADAH RANEE KOLANDAPUREE NATCHIAR v. DORASINGA TAYER* - - - xv P. C. 88

DECREE.*See* EXECUTION OF DECREE.

2. — *Form of decree on appeal—Refund of purchase-money.*] In reversing a decree on appeal, the Court should state the relief which they consider the appellant entitled to. *A.* purchased a Government revenue-paying estate from *B.*, but on going to take possession he found *C.*, who claimed under a patni grant, also from *B.*, in possession. A case was therefore instituted by *B.* under Act IV of 1840, but it was ordered that *C.* should be retained in possession. *A.* then brought a suit against *B.* and *C.* to recover his purchase-money. No relief was asked against *C.*, nor had *C.* anything to do with the sale from *B.* to *A.* The suit was dismissed. On appeal, it was ordered merely "that the decree be reversed, and the appeal decreed with costs." Nothing was asked against *C.* in the grounds of appeal. In execution of this decree, *C.*'s property was seized and sold. *C.* petitioned the Principal Sudder Ameen, who held that he was not liable, but on appeal the Judge held that he was liable for the purchase-money, and his property had been rightly sold in execution for it. *Held* on special appeal, that *C.* was not liable to refund the purchase-money. *BELL v. GURUDAS ROY* - i A. C. 50

3. — *Form of decree—Suit by purchaser for possession of share of ancestral estate.*] In a suit for possession of lands under purchase of a share in an ancestral estate, the Judge, in pronouncing a decree for the plaintiff, ought to declare specifically whether the plaintiff is entitled to recover the share in an undivided estate, or specific lands as representing that share. *RAMLOCHAN DAS v. MANSUR ALI*, [i A. C. 65

4. — *Suit for possession.*] In a suit for recovery of possession of land, it was declared that the plaintiff was entitled to possession as owner, and ordered that the defendants should deliver to him possession as such. *Held* on appeal, that the decree should have

DECREE—continued.

simply declared that the plaintiff was entitled to possession without any declaration of right as owner. **RADHAKRISHNA SETT v. HARAKRISHNA DAS** - - - - - i O. C. 1

5. — In a suit to recover possession of a certain mouza, claimed by the plaintiff as a portion of his dar-patni talook, which was brought against several defendants, four other persons applied to be made defendants, on the ground that they were co-sharers with the defendants on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed; and on the proofs which they adduced the plaintiff's claim was dismissed. The plaintiff's claim as against the original defendants who made no opposition was decreed in special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else but the person against whom he had brought the suit. *Held* that, upon the one issue common to all the defendants, viz., whether the property claimed was in the plaintiff's talook or in that of the defendants, the Court could only come to one consistent finding; and that on the finding of the facts in the Court below the suit should be dismissed against all the defendants. **KALI PRASAD SINGH v. JAINARAYAN ROY**, iii A. C. 24

6. — *Enhancement of rent, grounds for.*] In decreeing enhanced rent, it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed. **GANGA NARAYAN DAS v. SABODA MOHAN ROY CHOWDHRY** - - - - - iii A. C. 230

7. — *Suit by mortgagee against the mortgagor and purchasers of the mortgaged property.*] In execution of a decree, the right, title, and interest in two parcels of property of a judgment-debtor, who had previous to the attachment executed a simple mortgage thereof to A. was sold; and B. and C. respectively purchased them at different prices. A. sued the mortgagor and the purchasers B. and C., for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court; but on appeal, the order was "appeal decreed." A. entered into a compromise with B., and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against C. and compelled him to pay. C. now sued B. for recovery of the proportion of the amount paid by him to A., but which, according to the valuation of the respective properties, should have fallen into the share of B. *Held*, that the proper decree in the suit of A. against the mortgagor and B. and C. would have been a money-decree against the mortgagor only, with a declaration that the two properties were liable to be sold, clear of subsequent incumbrances, in satisfaction of the mortgage-bond debt. **BHAIRAB CHANDRA MADAK v. NADYAR CHAND PAL** - iii A. C. 357

DECREE—continued.

8. — *Widow in possession of estate as security for dower.*] Where a woman is in possession of her husband's estate as security for unpaid dower, the proper decree in a suit against her for possession by the heir, is a decree for possession subject to the amount due, with a direction for an account as to mesne profits received by her. **MAHOMED AMEERODDEEN KHAN v. MOZUFFER HOSSEIN KHAN** - - - - - v P. C. 570

9. — *Suit to set aside deed of sale.*] *Quare.*—Where it has been found that, as to a certain portion of the consideration-money of a deed of sale of joint ancestral property, there was a legal necessity, is it a correct principle to uphold the deed as to that portion of the land which bears the same proportion to the whole quantity conveyed, as the money borrowed for the discharge of the legal necessity bore to the whole amount of the consideration-money? **RAJARAM TEWARI v. LACHMAN PRASAD** - - - - - iv A. C. 118

10. — *Money-decree in suit for foreclosure or sale.*] A mortgagee sued for foreclosure or sale in the usual form. The suit was undenied. The plaintiff elected to take a simple money-decree against the mortgagor. The following words were appended to the decree:—"Note.—The equity of redemption in the property comprised in the mortgage is not liable to attachment and sale under this decree." After ineffectual attempts to realise his debt, the plaintiff applied to the Court for liberty to sell the mortgaged premises. *Held*, that the Court had a discretionary power to grant or refuse the sale. The note at the end of the decree did not amount to an absolute prohibition against the sale, but was merely meant as a guide to the Court which should have to execute the decree, and to show that execution should not issue against the equity of redemption, except by special leave of the Court. The Court made an order as if there had been a decree for sale in the first instance, except that the account was to be treated as a final account at the date of the decree. **NEERUNJUN MOOKERJEE v. OOPENDRO NARAIN DEB** - - - - - x 57

11. — *High Court affirming decree of Mofussil Court.*] The ruling in *Chondhry Wahid Ali v. Mullick Inayat Ali* (vi. 52) that, whether the decree of the lower Court is reversed, or modified, or affirmed, the decree passed by the Appellate Court is the final decree in the suit, and as such the only decree which is capable of being enforced by execution, not dissented from, except that it was suggested that in all cases it may be expedient expressly to embody in a decree of affirmance so much of the decree below as it is intended to affirm, and thus avoid the necessity of a reference to the superseded decree. *Quare.*—Can the ruling in *Amandmayi Dasi v. Purno Chandra Roy* (Sup. Vol. 506) be supported? **KISTOKINKER GHOSE ROY v. BURBODACAUNT SINGH ROY**, x P. C. 101

12. — *Pardanashin* — *Suit by, to set aside deed.*] In a suit by the heirs of a

DECREE—continued.

Mahomedan *pardanashin* lady to set aside a deed of sale executed by her, whilst living apart from her relations, in the house of the purchaser, who had occasionally acted as her mukhtar,—*held*, that where the substantial relief prayed for is that the deeds should be set aside, the Court is not justified in substituting therefor a mere declaration of the plaintiff's title. **THAKOOR DEEN TEWARREY v. ALI HOSSEIN KHAN** - - - - - xiii P. C. 427

18. — *Amendment or alteration of—Confirmation of, by High Court in appeal.*] After a decree has been confirmed by the High Court on appeal, the subordinate Court has no power to make any alteration in it. **ONRAET v. SANKAR DUTT SINGH** - - - - - v Ap. 60

14. — *Power to amend decree—Mistake.*] A. obtained a decree for costs in a suit brought by B. against A, and the decree was confirmed on appeal to the High Court on 18th June, 1869. On 13th December, 1871, A. applied for execution of the decree, but it was found that the decree omitted to specify from whom A. was to obtain his costs, and it was held that no execution could be taken out under the decree. A., therefore, applied to the Judge who passed the original decree to amend the decree, and the decree was amended on 21st August, 1872, by inserting B. as the party who was to pay A.'s costs. A. then made a fresh application for execution, which was allowed. *Held*, that the Judge had power to amend the decree notwithstanding it had been appealed from and confirmed by the High Court, and such order was appealable. **CHOWDHRY GOLUCK CHUNDER v. CHOWDHRY GANGA NARAIN**, [xi 363 and xi 368 note

ZUHOOR HOSSEIN v. MUSST. SYEDUN,

[xi 367 note

15. — *Uncertainty in decree—Execution.*] Where a decree is so uncertain that it is impossible to ascertain what is decreed, a plaintiff cannot be put into possession of any other thing by execution than that which the decree describes. Evidence cannot be given in the execution department to amend any uncertainty in the decree. The law allows certain matters to be ascertained in execution, but beyond those it is the duty of the Judge to take care that his decree is so precise that it is capable of execution without leaving it to the Court of execution to decide what the Judge intended to decree. The necessity of certainty in decrees discussed. **DWARKANATH HALDAR v. KAMALA KANTH HALDAR** - - - - - iii Ap. 128

16. — *Alteration of decrees.*] The High Court, on appeal from a judgment of the Recorder of Rangoon, directed that an account should be taken between the parties, and that in default of payment of the amount thereby found to be due from the defendant to the plaintiff within three months, a sale of the mortgaged property should be effected. On the 18th March, 1872, an order was passed by the Recorder of Rangoon, which was as follows:—"By consent the property subject to

DECREE—continued.

the equitable mortgage to be given up to the plaintiff in satisfaction of all claims and demands against the defendant under the decree of the High Court." On the 3rd July, 1872, the Recorder directed the defendant to execute within six days a conveyance of the mortgaged property to the plaintiff. On the 11th July, 1872, the Recorder declared that, if the conveyance was not executed within twenty-four hours by the defendant, the Court would execute it, and accordingly on the 12th July, 1872, the Court executed the conveyance. *Held*, that the Recorder had no power to pass the order of the 18th March, 1872, and that the defendant could not be required to execute the conveyance. **AZIMNULLAH MOODEEN v. CRUIKSHANK** - - - - - xi 67

17. — *Effect of—Estoppel.*] A decree, until it is set aside, is, as between the parties to it, conclusive both as to the rights of those parties and the character in which they sue. **BHAWABAL SINGH v. RAJENDRA PRATAP SAHOY** - - - - - v F. B. 331

18. — *Proceedings to set aside decree—Application for review.*] The proper course for a party desiring to set aside a decree passed against him by a competent Court, which he alleges to have been obtained by fraud, is to apply to the Court which passed the decree to review and alter it, and not to bring a suit for declaration of his right by setting aside such decree. **MEWA LALL THAKUR v. BHUJHUN LALL** - - - - - xiii Ap. 11

19. — *Jurisdiction to revive decree.*—In a suit for recovery of a sum of money expended towards improvement of a joint property, the Court passed a decree that, if the defendant would contribute towards payment of the expenses for the improvement, he would be entitled to a proportionate share of the profits. No steps were taken by the plaintiff from 1863 to revive the decree; but on the application of the defendant tendering the amount due from him, and praying to be put in possession, the lower Courts restored the decree, and passed an order in his favour. *Held*, that the lower Courts had no jurisdiction to revive a decree at the instance of the judgment-debtor. **NILAMBAR SEN v. KALI KISHOR SEN**, [iii Ap. 94

20. — *Construction 1341 of 17th June, 1842. Purchase of decree.*] The plaintiff purchased lands which had been pledged to the defendant on a bond, and, subsequently, in order to prevent their being taken in execution of a decree obtained by the defendant for the amount of the bond, the plaintiff purchased the decree from the defendant, who, notwithstanding, took out execution against the lands and sold them as though the decree had never been sold. In a suit by the plaintiff to recover possession of the lands and for reversal of the execution-sale, *held*, it was no defence that the plaintiff had not notified this purchase of the decree to the Court in compliance with Construction 1341 of 17th June, 1842. **SITARAM SAHU v. MOHAN MANDAR** - - - - - Sup. Vol. 345

DECREE AGAINST ONE OF SEVERAL JOINT DEBTORS.*See* CONTRIBUTION, SUIT FOR.**DECREE AGAINST WIDOW PERSONALLY.***See* HINDU LAW, WIDOW.**DECREE, ASSIGNMENT OF.***See* BENAMI PURCHASE.CIVIL PROCEDURE CODE, s. 208.
SET-OFF.**DECREE BARRED BY LIMITATION.***See* EVIDENCE.**DECREE, COPY OF, DEDUCTION OF TIME NECESSARY FOR OBTAINING.***See* LIMITATION ACT IX OF 1871, s. 13.**DECREE, ENDORSEMENT OF, UNDER ACT XXIII OF 1840, s. 1.***See* CIVIL PROCEDURE CODE, s. 81.**DECREE, EX PARTE.***See* BENG. ACT VIII OF 1869, s. 103.
CIVIL PROCEDURE CODE, s. 119.**DECREE FOR PERFORMANCE OF A PARTICULAR ACT.***See* CIVIL PROCEDURE CODE, s. 200.**DECREE, FORM OF.***See* RESTITUTION OF CONJUGAL RIGHTS.**DECREE, GROUND FOR OBJECTING TO.***See* SERVICE OF SUMMONS.**DECREE OBTAINED ON PLAINT INSUFFICIENTLY STAMPED.***See* CIVIL PROCEDURE CODE, s. 272.**DECREE OF SMALL CAUSE COURT, SUIT ON.***See* EVIDENCE.**DECREE, PARTIES APPEARING IN, WHO WERE NOT PARTIES TO SUIT.***See* ACT XXIII OF 1861, s. 11.**DECREE PAYABLE BY INSTALLMENTS.***See* ATTACHMENT.

BOND.

CIVIL PROCEDURE CODE, s. 206.

DECREE, REVERSAL OF WHOLE, ON APPEAL BY ONE DEFENDANT.*See* CIVIL PROCEDURE CODE, s. 337.**DECREE, SATISFACTION OF.***See* CROSS-DECREE.

NAZIR, LIABILITY OF.

SUCCESSION ACT, s. 282.

DECREE, TRANSFER OF, FOR EXECUTION.*See* BENG. ACT III OF 1870.

CIVIL PROCEDURE CODE, s. 286.

EXECUTION OF DECREE.

DECREE WRONGLY EXECUTED.*See* ACT XXIII OF 1861, s. 11.**DECREE-HOLDER, ARRANGEMENT BETWEEN DECREE-HOLDER AND ONE OF SEVERAL JUDGMENT-DEBTORS.***See* DEBTOR AND CREDITOR.**DECREE-HOLDER, LIABILITY OF, WHERE PROPERTY IS WRONGLY SEIZED.***See* SALE IN EXECUTION OF DECREE.**DECREE-HOLDER, PURCHASE BY.***See* SALE IN EXECUTION OF DECREE.**DECREE-HOLDER, RIGHT OF ONE AGAINST ANOTHER.***See* CIVIL PROCEDURE CODE, s. 246.**DEDUCTION OF TIME, SUIT IS BEING PROSECUTED IN COURT WITHOUT JURISDICTION.***See* LIMITATION ACT XIV OF 1859, s. 14.**DEED, EXECUTION OF.***See* ESTOPPEL.

EVIDENCE.

EVIDENCE ACT.

DEED OF GIFT, CONSTRUCTION OF.*See* HINDU LAW, ADOPTION.

HINDU LAW, GIFT.

DEED OF SALE, RECITAL IN.*See* HINDU LAW, ALIENATION.**DEED, SUIT TO SET ASIDE.***See* DECLARATORY DECREE, SUIT FOR.
DECREE.

DURESS.

DEEDS—Proof of genuineness of—Suspicion.]

Deeds though unregistered (registration not being compulsory), when proved by all the attesting witnesses, and against which there is no evidence on the other side, ought not to be set aside on mere suspicion of perjury and forgery. *KALI CHANDRA CHOWDURY v. SHIB CHANDRA BHADURI* - - - vi P. C. 501

DEFAMATION — Penal Code, s. 499.] The accused, an inspector of police, was sent to enquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the Banias of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private enquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under s. 499 of the Penal Code supported under the circumstances of the case. *IN THE MATTER OF THE PETITION OF RAJNARAIN SEIN* - - - - - vi Ap. 42

DEFAMATION, SUIT FOR.*See* SPECIAL APPEAL.**DEFENDANTS, SEPARATE APPEARANCE OF.***See* COSTS.**DELAY OF MINOR IN REPUDIATING.***See* GUARDIAN.**DEL CREDERE AGENT.***See* LIMITATION ACT XIV OF 1859, s. 1, CL. 9.**DELIVERY OF POSSESSION, EXECUTION OF BILL OF SALE WITHOUT.***See* VENDOR AND PURCHASER.**DEMAND.***See* LIMITATION ACT XIV OF 1859, s. 1, CL. 9; CL. 15.
MAHOMEDAN LAW, DOWER.**DEPOSIT OF ARREARS OF RENT.***See* BENG. ACT VI OF 1862, s. 4.

SALE FOR ARREARS OF RENT.

DEPOSIT OF EARNEST-MONEY.*See* VENDOR AND PURCHASER.

DEPOSIT OF MONEY.

See LIMITATION ACT XIV OF 1859,
s. 1, CL. 9; CL. 15.

PARTIES.

DEPOSIT OF TITLE-DEEDS.—*Security—Lien—Equitable mortgage.*] The firm of *C. N. & Co.*, Calcutta, had an account with a Bank, of which *R.* was manager, under an arrangement that the Bank should discount bills accepted by *C. N. & Co.* to a certain amount, and that *C. N. & Co.* should keep in the Bank a certain fixed cash balance. In November, *R.* finding that the limit of the discount accommodation had been exceeded, and the cash account overdrawn, declined to discount any more bills unless security were given for the amount then due to the Bank. *A.*, the only partner in the firm of *C. N. & Co.* then in Calcutta, verbally promised on 24th November to deposit with the Bank the title-deeds of the premises in which *C. N. & Co.* carried on their business; and in consideration of such promise, *R.* discounted further bills from 24th to 29th November. *A.* sent to *R.* a letter on 25th November as follows:—"In pursuance of the conversation the writer had with you yesterday, we now deposit the title-deeds of landed house property as security against our discount account." The letter enclosed certain title-deeds, of which *R.* acknowledged the receipt. *R.* subsequently discovered they were not the title-deeds which *A.* had promised to deposit, and of this he gave *A.* a notice by letter on 28th November. *C. N. & Co.*, on the 5th December, 1870, suspended payment, and by the usual order their estate and effects vested in the Official Assignee, who thereupon, finding that the Bank claimed a lien on the deeds, brought a suit against the Bank for recovery of them. *Held*, that the Bank was entitled to retain the deeds as security both for the balance of the discount account existing at the time of the promise to deposit, and also for the bills discounted between the 24th and 29th November. *Semble*.—The Bank was entitled to hold the deeds actually deposited as if they were the deeds which formed the subject of the verbal promise to *R.* *MILLER v. THE CHARTERED MERCANTILE BANK OF INDIA, LONDON, AND CHINA* - - - vi 701

2. — Where title-deeds of land had been deposited by a debtor with the Bank of Bengal, and a letter was given authorizing the Bank to sell the land and apply the proceeds in liquidation of a debt then existing and due to the Bank, it was held that a valid equitable mortgage was thereby created in favour of the Bank as a security for the money due. *IBRAHIM AZIM v. CRUIKSHANK* - vii 653

3. — The defendant deposited certain title-deeds with the plaintiff as security for the repayment of Rs. 1,200 lent him by the plaintiff at the time the deposit was made. On the evening of the same day, the defendant, by way of further security, gave to the plaintiff a promissory note for the amount of the loan and endorsed thereon the following memorandum: "For the repayment of the loan

DEPOSIT OF TITLE-DEEDS—continued.

of Rs. 1,200 and the interest due thereon of the within note of hand, I hereby deposit with the plaintiff, as a collateral security by way of equitable mortgage, title-deeds of my property. *Held*, the equitable mortgage was complete without the memorandum; the memorandum was not a writing which the parties had made as the evidence of their contract, but only a writing which was evidence of the fact from which the contract was to be inferred. *KEDARNATH DUTT v. SHAMLALL KHETTRY* xi 405

DEPOSIT TO PROTECT TENURE FROM SALE.

See SALE FOR ARREARS OF RENT.

DEPOSITIONS.

See EVIDENCE.

EVIDENCE ACT.

DEPUTY COLLECTOR, JURISDICTION OF.

See BENG ACT VI OF 1862, s. 19.

DEVISEE UNDER WILL.

See CERTIFICATE OF ADMINISTRATION.

DILUVION.

See ACCRETION.

DIRECTORS.

See COMPANY.

DISAPPEARANCE.

See HINDU LAW, PRESUMPTION OF DEATH.

DISBURSEMENTS, LIEN FOR.

See BOTTOMRY-BOND HOLDER.

DISCHARGE OF ACCUSED.

See COMPLAINT.

CRIMINAL PROCEDURE CODE X OF
1872, s. 296 AND s. 297.

MAGISTRATE, POWERS OF.

2. — *Criminal Procedure Code (Act XXV of 1861), ss. 250, 251, 255, 435—Act VIII of 1869, s. 435—Sessions Judge, power of.*] Where no formal charge has been drawn up by the Magistrate under s. 250 of Act XXV of 1861, and the accused has not been called upon under s. 251 to plead thereto, and is not tried thereunder, a release by the Magistrate of the accused does not amount to an acquittal under s. 255, but simply to a discharge under s. 250. Under such circumstances, s. 435, Act VIII of 1869, empowers a Sessions Judge to direct the committal of the accused to take their trial. *IN RE JAGABANDHU MYTI v. GOBERDHAN BERA* - - - - - iv A Cr. 1

3. — Where an accused person has been discharged by a Magistrate under s. 250 of the Criminal Procedure Code, after enquiry into the case, the Court of Session cannot, under s. 435, remand the case for further enquiry. *IN THE MATTER OF THE PETITION OF CARPERSZ* - - - - - ix 337

4. — Where a Magistrate had discharged an accused under s. 250 of the Criminal Procedure Code, and afterwards the Sessions Judge having remanded the case for further enquiry re-tried it and convicted the accused, the High Court, while holding that the Sessions Judge

DISCHARGE OF ACCUSED—continued.

had no power to make the order of remand, upheld the conviction. IN THE MATTER OF THE PETITION OF JIAT SAHU - - ix 339

DISCHARGE OF JUDGMENT-DEBTOR.

See CIVIL PROCEDURE CODE, s. 273.
SUBSISTENCE-MONEY.

DISHONOR.

See HINDU LAW, WILL.

DISHONOR, NOTICE OF.

See BILL OF EXCHANGE.
HINDU LAW, CONTRACT.
HUNDI.
MAHOMEDAN LAW, BILL OF EXCHANGE.

DISMISSAL OF APPEAL FOR WANT OF PROSECUTION.

See APPEAL TO PRIVY COUNCIL.
PRIVY COUNCIL, PRACTICE OF.

DISMISSAL OF CHARGE.

See COMPLAINT.

DISMISSAL OF PETITION, SETTING ASIDE ORDER FOR, ON ACCOUNT OF FRAUD.

See INSOLVENT ACT.

DISMISSAL OF SUIT FOR DEFAULT IN APPEARANCE.

See CIVIL PROCEDURE CODE, ss. 110, 111, 114, AND 217.

DISMISSAL OF SUIT FOR INSUFFICIENT STAMP.

See APPELLATE COURT.

DISMISSAL OF SUIT FOR MULTIFARIOUSNESS.

See RES JUDICATA.

DISPOSSESSION IN EXECUTION OF DECREE AGAINST ANOTHER PARTY.

See CIVIL PROCEDURE CODE, s. 269.

DISTRESS.

See INSOLVENT ACT, ss. 7 AND 22.
LANDLORD AND TENANT.

DISTRIBUTION OF SALE PROCEEDS.

See ATTACHMENT.

DISTRICT JUDGE.

See BENG. ACT VIII OF 1869, s. 102.

DISTRICT JUDGE, POWER OF.

See REVIEW.

DISTRICT, SUBDIVISION OF.

See BENG ACT VI OF 1862, s. 20.

DISTRICTS TO WHICH THE PERMANENT SETTLEMENT HAS NOT BEEN EXTENDED.

See ACT X OF 1859, ss. 15 AND 16.

DIVESTING OF PROPERTY.

See HINDU LAW, INHERITANCE.
HINDU LAW, WIDOW.

DIVIDEND IN RESPECT OF DEBT AGAINST AN ESTATE.

See ADMINISTRATION, SUIT FOR.

DIVISION BENCH OF HIGH COURT, POWER OF.

See ENGLISH COMMITTEE.

DIVORCE.

See MAHOMEDAN LAW, DIVORCE.

DIVORCE ACT (IV OF 1869) — Jurisdiction—Damages.] The High Court has jurisdiction to admit a petition for divorce, where the parties are resident, and the adultery is committed, in the district of the 24-Pergannas. Principle on which the Court will assess damages discussed. KELLY v. KELLY and SAUNDERS - - - - iii O. C. 67

—, ss. 4 and 18—*Matrimonial jurisdiction—Marriage—Nullity.*] The High Court cannot entertain a suit of a matrimonial nature otherwise than as provided by the Indian Divorce Act; and, therefore, has no jurisdiction to make a decree of nullity on the ground, that the marriage was invalid. GASPER v. GONSALVES - - - - xiii 109

—, s. 7—*Practice—Inspection of letters.*] The respondent is entitled to have brought into Court letters written to her by the petitioner, while the facts to which they speak were fresh in her memory. If the petitioner has none, he should make an affidavit to that effect. GORDON v. GORDON - - iii O. C. 100

—, s. 11—*Addition of co-respondent—Prostitute—Amending petition—Laches of petitioner.*] Under the Divorce Act, IV of 1869, the addition of a co-respondent is not necessary if the wife has been leading the life of a prostitute, and the petitioner knows of no person with whom adultery has been committed. Where the respondent was living not a life of promiscuous intercourse with all who sought her, but living with separate persons in succession, and professed to be able to attribute her respective children to a father, she was held not to be leading a life of prostitution within the meaning of the Act. Where a petitioner neglected for fourteen years to take any steps to obtain a separation from his wife, whom he knew to be living in adultery, the Court refused to allow the petition to be amended by the addition of co-respondents. ROE v. ROE - - iii Ap. 9

—, ss. 13 and 14 — *Cruelty — Condonation.*] The petitioner sued for a divorce on the ground of his wife's adultery. The adultery was admitted, but the respondent proved that her husband had been guilty of various acts of cruelty towards her, which disentitled him to have an unconditional divorce, and claimed on this ground a right to a judicial separation with alimony, under s. 15 of the Indian Divorce Act. She was at the time of the suit living with the co-respondent. *Held*, that the respondent was not entitled to a decree for judicial separation with alimony. The Court has discretion, under s. 14 of the Act, to refuse a decree for divorce if the petitioner has been guilty of cruelty, although the cruelty may have been condoned. *See* ss. 13, 14, and 15 of the Indian Divorce Act commented on. GORDON v. GORDON AND SARAN - - iii O. C. 136

2. — The cruelty must be specifically pleaded, and if it is not, the Court will not allow the issue to be raised or evidence given of it. KELLY v. KELLY AND SAUNDERS,

[iii Ap. 6

DIVORCE ACT (IV OF 1869)—continued.

—, s. 16—*Motion to make decree nisi absolute—Service of decree nisi on respondent and co-respondent—Practice.*] When an application was made by the petitioner to make absolute a rule nisi for dissolution of his marriage with the respondent, and it appeared he had tried in vain to discover the respondent and co-respondent so as to serve them with notice of the decree nisi, the Court made the decree absolute without such service. **WARDEN v. WARDEN**, [1x Ap. 39]

2. — *Application to make decree nisi absolute—Notice.*] The parties against whom a decree is made in a suit for divorce against the wife, cannot come in to show cause why a decree nisi should not be made absolute: therefore, in an application to make the decree absolute, it is immaterial that the respondent has had no notice of the application. **WILLIS v. WILLIS** — — — — — iv O. C. 52

—, s. 17—*Act XIV of 1859, s. 1, cl. 16.*] Act XIV of 1859, s. 1, cl. 16, does not apply to divorce suits. A decree of a High Court confirming the decree by a District Judge for dissolution of marriage reversed, so far as it affected the co-respondent, and condemned him in costs. **HAY v. GORDON** — — — — — x P. C. 301

—, s. 35—*Costs of respondent—Succession Act (X of 1865), s. 4.*] In a suit by a husband for a divorce on the ground of his wife's adultery, an application was made that the petitioner should be directed to pay the respondent's costs. The marriage took place after the passing of the Succession Act, 1865, and it was contended that as s. 4 of that Act did not allow the husband to acquire any interest in his wife's property, he would not be made to pay her costs; there was, however, no evidence before the Court that the wife had any separate property, and the application was granted. **BROADHEAD v. BROADHEAD** — — — — — v Ap. 9

2. — *Payment of wife's costs.*] On an application by the wife that a sum should be paid into Court to cover her costs of a suit for divorce in which she was respondent, the Court ordered the Registrar to estimate the probable expenses of the suit from the commencement to the date of final hearing: such sum was ordered to be paid into Court; the wife's proctor to have a lien on the sum to the extent of his costs. An application that the amount estimated should be paid out of Court to her, was refused; but the Court granted an application that the respondent's costs incurred should be taxed, and the amount thereof be paid out of Court to her proctor. **KELLY v. KELLY AND SAUNDERS** — — — — — iii Ap. 5

3. — *Suit for judicial separation—Return to cohabitation—Withdrawal of suit—Costs.*] Where, in a suit by a wife against her husband, the attorney for the petitioner made an application on notice to the petitioner, the respondent, and the respondent's attorney, for an order that the suit be dismissed or withdrawn; and that the petitioner's costs be taxed and the amount thereof be paid to him by the respondent, and stated in his affidavit that he had ins-

DIVORCE ACT (IV OF 1869), s. 35—continued.

tituted the suit under the instructions of the petitioner; that the parties had returned to cohabitation and the suit had been amicably settled; that the petitioner had since instructed him to withdraw the suit, and the respondent would pay the costs, for which purpose he had drawn a petition, which the respondent's attorneys would not agree to, the Court granted the application, so far as to direct that the costs of the petitioner's attorney, when taxed, should be paid by the respondent, but refused to make any order for the withdrawal or other final disposal of the suit, and ordered that the attorney should personally bear the costs of the application. **P—v. P—** — — — — — ix Ap. 6

—, s. 36—*Application for alimony.*] In an application for alimony it is sufficient to set out the fact of the marriage in the petition. An affidavit to that effect is unnecessary. In making the application, it is sufficient to show the Court that there has been a ceremony which might be a valid marriage; and, therefore, where the petitioner was shown to be the respondent's deceased wife's sister, alimony was granted. **CRUMP v. CRUMP** — — — — — iii O. C. 101

2. — *Alimony pendente lite—Practice.*] Alimony pendente lite will be granted by the Court from the date of the service of citations, not from the date of the return. **KELLY v. KELLY AND SAUNDERS** — — — — — iii Ap. 5

3. — *Alimony pendente lite—Wife living with co-respondent—Costs.*] In a suit by the husband for a divorce on the ground of his wife's adultery, where it is found that the wife is at the time of presenting the petition living with the co-respondent, or living apart from the husband, under such circumstances that she does not pledge his credit, an application by the wife for alimony pendente lite will be refused. *Semble.*—The wife's costs, however, will be allowed. **GORDON v. GORDON AND SARAN** — — — — — iii Ap. 13

4. — *Alimony—Failure to pay—Attachment of respondent.*] The respondent in a suit brought by a wife for the dissolution of her marriage, was ordered to pay her Rs. 120 a month for alimony, and to pay into Court Rs. 2,000, the certified amount of her costs. On his failure to pay this sum, he was directed by a further order to pay into Court to the credit of the suit Rs. 300 monthly; out of which Rs. 120 were for alimony, and the balance for costs. The respondent continued in receipt of his usual income, but failed to make the payment directed by the order of the Court, and subsequently filed his petition of insolvency; in his schedule he entered the Accountant-General as a creditor for Rs. 2,000, but made no mention of his liability for alimony, and he had not filed any accounts. On an application by the petitioner for his attachment stating the above facts, the Court granted the attachment. **GEORGE v. GEORGE** — — — — — xi Ap. 2

—, s. 37—*Permanent alimony.*] Principle on which the Court will grant permanent alimony. **ORD v. ORD** — — — — — v Ap. 34

DIVORCE ACT (IV OF 1869), s. 37—continued.

2. — *Adultery and desertion—Delay in bringing suit—Permanent alimony.* A wife brought a suit for a dissolution of marriage on the ground of her husband's adultery and desertion. The desertion took place twenty-four years before the suit was brought, and ever since the husband had made his wife an allowance. Latterly his circumstances had considerably improved. The Court gave a decree for dissolution, but in determining the suitable amount of permanent alimony it took into consideration the circumstances of the husband at the time of the desertion, and refused to give the wife the full advantage of the present improved circumstances of the husband. *SMYTH v. SMYTH* - - v Ap. 153

3. — *Alimony—Costs.* The Court has power, under s. 37 of Act IV of 1869, to order permanent alimony to the wife when a husband obtains a divorce on the ground of her adultery. *KELLY v. KELLY AND SAUNDERS* - - v 71

—, s. 40—*Order as to marriage settlement.* By an ante-nuptial settlement, A. settled certain immovable property in Calcutta, to which he was absolutely entitled, upon himself for life, then upon his intended wife for life, and then upon the children of the marriage; but in the event of the intended wife dying in his lifetime without leaving issue, then upon himself, his heirs and assigns for ever. The marriage having been dissolved on the ground of the adultery of the wife before any children were born of the marriage, and the wife having subsequently married the co-respondent, by whom she had children, and with whom she continued to live, the Court, under s. 40, Act IV of 1869, declared the settlement void as regarded the wife, and directed the trustees to reconvey the property to A. for an absolute estate. *WOOD v. WOOD* - - - xiv Ap. 6

—, s. 41—*Suit by wife for judicial separation—Custody of children.* When a wife obtains a decree for judicial separation on the ground of her husband's cruelty and adultery, and there is nothing to impeach her own conduct, the Court will allow her to have the custody of the children. *MACLEOD v. MACLEOD*, [vi 318

2. — *Adultery of wife—Access to children.* When the marriage is dissolved on account of the adultery of the wife, she is not entitled to have access to the children of the marriage. *KELLY v. KELLY AND SAUNDERS*, [v 71

—, 45—*Practice as to filing written statements.* In a suit for divorce on the ground of the wife's adultery, the co-respondent *suo motu* filed a written statement only four days before the hearing, and gave notice thereof only one day before. In an application to have it taken off the file as not being filed within time, *held*, that there was nothing in the rules of Court, or the Code of Civil Procedure, by which the proceedings under the Act are to be regulated (s. 45), which makes it compulsory on a party who tenders a writ-

DIVORCE ACT (IV OF 1869), s. 45—continued.

ten statement of his own accord to present it before the first hearing of the suit. *ABBOTT v. ABBOTT AND CRUMP* - - - iv O. C. 51

—, s. 52—*Witness.* The respondent in a suit for divorce under Act IV of 1869 can be examined as a witness. By the 52nd section, she may be compelled to give evidence in the cases there supposed. In other cases her evidence is admissible if she offers herself as a witness. *KELLY v. KELLY AND SAUNDERS*, [iii Ap. 6

—, s. 55—*Right of co-respondent to be heard on appeal.* A husband brought a suit for divorce against his wife on the ground of her adultery; the co-respondent appeared in that suit. The respondent appealed on the ground (*inter alia*) that on the evidence the Court ought to have held that the adultery was not proved. *Held*, that in that appeal the co-respondent was not entitled to be heard in opposition to the appeal. *KELLY v. KELLY AND SAUNDERS* - - - - - v 71

DOCUMENT THIRTY YEARS OLD.

See EVIDENCE.

DOCUMENTS.

See CIVIL PROCEDURE CODE, s. 123. EVIDENCE.

DOCUMENTS, COPIES OF.

See PRISONER, RIGHT OF.

DOCUMENTS, RECEPTION OF, AFTER FILING PLAINT.

See CIVIL PROCEDURE CODE, s. 39.

DOMESTIC SERVANTS.

See ACT XIII OF 1859. WILL.

DOMICILE.

See MARRIAGE, VALIDITY OF. WILL.

DONATIO MORTIS CAUSA.

See HINDU LAW, GIFT.

DOWER.

See MAHOMEDAN LAW, DOWER.

DOWER, CAUSE OF ACTION IN RESPECT OF.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 9.

DOWER, LIEN FOR.

See RES JUDICATA.

DOWER, SUIT AGAINST WIDOW IN POSSESSION OF ESTATE AS SECURITY FOR.

See DECREE.

DURESS—Suit to set aside deed—Restoration of advantage accruing to plaintiff under deed. Where one seeks to set aside a deed on account of duress, and such duress does not amount to personal duress, but merely to pressure by threats as of injury to property, the plaintiff must offer to restore any benefit accruing to him under the deed. *GUTHRIE v. ABUL MAZAFFER* - - - - - vii P. C. 630

2. — *Common assembly—Damage done to property.* Coercion to form a member of a common assembly by the members of which

DURESS—continued.

damage has been done to property, or coercion to bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. *GANESH SINGH v. RAM RAJA*, [iii P. C. 44]

DWELLING-HOUSE, LANDS APPURTENANT TO.

See ENHANCEMENT OF RENT.

JURISDICTION OF REVENUE COURT.

EASEMENT.

See PRESCRIPTION.
USER.

EJECTMENT ON EXPIRY OF LEASE.

See ACT X OF 1859, s. 25.

LANDLORD AND TENANT.

EJECTMENT, RIGHT OF.

See RIGHT OF OCCUPANCY.

EJECTMENT, SUIT FOR.

See ACQUIESCENCE.

LIMITATION ACT X OF 1859.

ENCROACHMENT.

See LANDLORD AND TENANT.

ENDORSEMENT.

See EVIDENCE.

ENDORSEMENT, FORGED.

See HUNDI, SUIT ON.

ENDORSEMENT TO ALLOW THIRD PERSON TO SUE.

See PROMISSORY NOTE.

ENDORSEMENTS, LOSS OF NEGOCIABILITY OF NOTE BY BEING COVERED WITH.

See GOVERNMENT PROMISSORY NOTE.

ENDOWMENT.

See ACT XX OF 1863.

HINDU LAW, ENDOWMENT.

MAHOMEDAN LAW, ENDOWMENT.

ONUS PROBANDI.

ENGLISH COMMITTEE—Dismissal of Munsif—Power of Division Bench of High Court.] A Munsif who had been dismissed by an order of the English Committee, consisting of four Judges of the High Court, applied to a Division Bench, consisting of the Chief Justice and Mitter, J., to reconsider his case. The Chief Justice having dismissed his application, while Mitter, J., considered that he was entitled to a rehearing, he appealed under cl. 15 of the Letters Patent. The Court considered it unnecessary to enter into the merits of the questions raised, and *held*, that the Munsif having been removed by an order of four Judges forming the English Committee, no Division Bench had any power to reconsider, or review, or set aside, or to order the Judges of the English Committee to reconsider, review, or set aside the decision of the English Committee. **IN THE MATTER OF THE PETITION OF HURIS CHUNDER MITTER** - - - x 79

IN RE DENONATH MULLICK x 80 and 82 note

ENGLISH LAW.

See MORTGAGE

PARTNERSHIP.

TERRITORIAL LAW OF BRITISH INDIA.

2. — *How far applicable to natives of India.*] It has always been the policy of the Courts of this country not to apply the strict rules of English law to natives of this country. *PARABDI SAHANI v. MAHOMED HOSSEIN* - - - - - i A. C. 87

3. — The principle that a party cannot both approbate and reprobate the same transaction is applicable to Indian cases. *SHAH MA-KHANLAL v. SRIKRISHNA SINGH* ii P. C. 44

ENHANCEMENT OF PUNISHMENT.

See CRIMINAL PROCEDURE CODE (ACT X OF 1872), s. 280.

REVISION.

SENTENCE.

ENHANCEMENT OF RENT.

See DECLARATORY DECREE, SUIT FOR.
DECREE.

GHATWALI TENURE.

KABULIAT, SUIT FOR.

LIMITATION ACT X OF 1859.

ONUS PROBANDI.

RES JUDICATA.

SALE FOR ARREARS OF REVENUE.

2. — *Priority of title or tenure.*] A suit for enhancement implies such a priority of title or tenure existing between the parties that a claim to some rent is legally inferrible from it. The decision in *Rani Surnomoyee v. Moharajah Suttees Chunder Roy* (10 Moore's I. A. 123) commented on. *SATYABARAN GHOSAL v. MOHESH CHUNDER MITTER* - ii P. C. 23

3. — *Mourasi tenure.*] A mourasi (perpetual) tenure does not necessarily carry with it fixity of rent; it is matter of evidence whether it does or not, therefore, the rent of such a tenure may be liable to enhancement. *ANANDLAL DASS v. MUSHUN ALI*, [ii A. C. 98 note

4. — *Suit for kabuliat—Rate paid for similar lands.*] In a suit for a kabuliat at an enhanced rate under a patta, the terms of which were that the lessee should hold the lands for four years rent-free; that after measurement the lands were to be assessed; that then he was to pay four annas a biga in the year 1265, six annas in 1266, and eight annas and three gandas in 1267 and for five years after: *Held*, this did not constitute a mokurari holding at a fixed rate. The case was remanded to ascertain what were the rates of similar lands in the neighbourhood in 1274, and decree to be made accordingly. *KASIMUDDI KHANDKAR v. NADIR ALI TARAFDAR*, [ii A. C. 265

5. — *Act X of 1859, s. 17, cl. 3—Suit for kabuliat.*] Where a zemindar sued a ryot for enhancement of rent on the ground that he was holding more land than he paid for, the land in excess not being included in any patta which had been granted to the ryot,

ENHANCEMENT OF RENT—continued.

but being within his 'jote'—*held*, that the zemindar could properly sue for enhancement of rent under Act X of 1859, s. 17, cl. 3, and the Court would grant such relief, notwithstanding that the plaintiff also asked that execution of a kubuliat might be ordered after determining the rate of rent. **MUKTAKESHI DEBEE CHOWDRAIN v. SAJED SHEIK** ii Ap. 5

6. — *Act X of 1859, ss. 13 and 17.* The defendant, as middleman, took a clearing lease of certain land, which it was agreed in the kubuliat he should hold during 1260 without any rent; "for 1261, at the rate of Rs. 1 per kanee; for 1262, at Rs. 2 per kanee; for 1263, at Rs. 3 per kanee; and in 1264, at the full customary rate of Rs. 5 per kanee." The tenure was admittedly a permanent one. In a suit for arrears of rent for 1272, after notice of enhancement under s. 13, Act X of 1859, *held*, that the intention was that, after 1264, the rent should be fixed, and it was therefore not liable to enhancement. In such a suit, if the enhancement be refused, a decree should not be given for arrears of rent at the rate agreed in the kubuliat. **SOORASCONDERY DABEE v. GOLAM ALLY**,
[xv P. C. 125 note

7. — Where it was stipulated in the patta that the land should be held rent-free for five years, from 1250 to 1254; that, for 1255, a rate of 5 annas a biga should be paid; for 1256, 10 annas a biga; and that from 1257 the rate to be paid every year should be the "pura dastur," or full customary rate of 14 annas,—it was *held* not to constitute a holding at a fixed rent. **BHARAT CHANDRA AITCH v. GAUR MANI DAS** — ii A. C. 286 note

8. — *Land with buildings—Mokurari.* Where a patta was granted at "mokurari" rates, and the lands were taken for erecting buildings thereon, and carrying on the works of an Indigo factory,—it was *held* to indicate a building lease at a fixed rent and a suit for enhancement would not lie in respect of such land. **KERRY v. MADANLAL DOSS**,
[18 N. xi

9. — *Jurisdiction of Revenue Court—Act X of 1859, s. 23.* A suit will not lie in the Collector's Court to enhance the rent of land on which a shop stands, the shop being the thing for which rent is paid, and the land merely an adjunct to it. **MADAN SINGH v. MADAN RAM DEB** — — — i S. N. xi

10. — *Beng. Act VIII of 1869.* A suit for enhancement of rent under Beng. Act VIII of 1869 will not lie in respect of lands occupied by buildings. **BROJO NATH KUNDU CHOWDREY v. STEWART** — — — viii Ap. 51

11. — A suit for enhancement of rent of land covered with buildings will not lie in the Revenue Court under cl. 4, s. 23 of Act X of 1859, but is cognizable only by a Civil Court. **DURGA SUNDARI DAS v. BIBI UMDA-TANNISSA** — — — — — ix 101

SHAW KHAIRUDDIN AHMED v. ABDUL BAKI,
[iii A. C. 65

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CHURCH v. RAMTANU SHAHA — ix 106 note
RAMDHUN KHAN v. HARADHAN PARAMANICK — — — — — ix 107 note
IN RE BRAMMAMYI BEWA (MITTER, J., dissenting) — — — — — ix 109 note

12. — *Lands situated in a town—Beng. Act VIII of 1869.* A suit cannot be maintained under Beng. Act VIII of 1869 for rent at enhanced rates of land not used for agricultural or horticultural purposes, but situated in a town. **MADAN MOHAN BISWAS v. STALKART** — — — — — ix 97

13. — A plaintiff brought a suit for enhancement of rent of lands occupied with buildings, under Beng. Act VIII of 1869. *Held, per E. JACKSON, J.*, that, though Beng. Act VIII of 1869 does not apply to lands used for building purposes, the Civil Court has jurisdiction to determine suits concerning the rent of such lands, and therefore had jurisdiction to entertain the present suit. *Held per MITTER, J.*, that the word 'land' in Beng. Act VIII of 1869 is used in its ordinary sense, quite irrespective of the purposes for which it is applied; and that a suit for enhancement of the rent of land on which a house is built will lie under Beng. Act VIII of 1869. **BRAJANATH KUNDU CHOWDREY v. LOWTHER** ix 121

14. — *Lands for building purposes—Bastu land.* Bastu land (land used for sites of houses) situated in a town cannot form the subject of suits under Act X of 1859 for enhancement. Bastu land, which is the site of a house occupied by a ryot engaged in cultivating the surrounding lands, does fall under the provision of Act X of 1859. **NAIMUDDA JOWADDAR v. MONORIEFF** — — — iii A. C. 283

KAILAS CHUNDER SIKKAR v. DURGADAS TARAFDAR — — — — — iii A. C. 284 note

15. — Land had been let under different pattas to a man for building and horticultural purposes, to be enjoyed by him, his sons, and his sons' sons for ever at a rent mentioned in the pattas. *Held*, that the rent was not liable to enhancement. **KAILAS CHANDRA ROY v. HIRALAL SEAL** — — — — — ii A. C. 93

16. — *Dwelling-house in village—Jurisdiction of Revenue Court.* A suit for enhancement of rent of a dwelling-house in a village is cognizable by the Collector. **ABDUL HAMID v. DONAGRAM DEY** — — — — — iii Ap. 133

17. — *Reg. XIX of 1814, s. 9—Lands appurtenant to a dwelling-house.* The defendant had been declared entitled, under s. 9, Reg. XIX of 1814, to hold certain lands as attached to his dwelling-house, at an equitable rent payable to the landlord. The landlord subsequently sued in the Revenue Court for enhancement of rent of these lands. *Held per GLOVER, J.*, that the rent so fixed on that land must be considered the fixed rent of the homestead of the house and ground, and not therefore capable of enhancement. **SHAW KHAIRUDDIN AHMED v. ABDUL BAKI** — — — — — iii A. C. 66

18. — *Reg. VIII of 1793, s. 51.* Where a zemindar, a purchaser from a mortgagee

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sued to enhance the rent of lands (part of the purchased zemindari) held on a ryoti kadimi tenure, which had existed more than twelve years before the decennial settlement, but the holder of which had subsequently accepted a patta from the zemindar.—*held*, the acceptance of such patta did not debar the tenant from the right of exemption from enhancement to which he was entitled by reason of the nature of his tenure. Such a patta may be confirmatory only, and is not inconsistent with the presumption that a prior title existed. *Sembla*.—A claim to exempt a tenure from enhancement, on the ground that it is a ryoti kadimi tenure, does not fall within Reg. VIII of 1793, s. 51. **RAMCHUNDER DUTT v. JOGESHCUNDER DUTT** - - - xi P. C. 239

19. — *Reg. VIII of 1793, s. 51—Act X of 1859, s. 15.* A dependent talook created before the decennial settlement is protected from enhancement by s. 51, Reg. VIII of 1793, except under the circumstances therein mentioned. In a suit by a zemindar for enhancement, brought after Act X of 1859 came into operation, against the holder at a fixed rent of a dependent talook, the latter is protected from enhancement by the provisions of s. 15 of that Act, notwithstanding decrees pronounced in previous litigation between the parties declaring the zemindar's right to enhance, and directing that the rent of the talook should be assessed at perganna rates, if it appear that the rent never has been assessed at perganna rates, and never has been enhanced, but has remained unchanged from the time of the Permanent Settlement. Such decrees place the zemindar in no better position than other landlords, who, previously to the passing of Act X of 1859, had a good right to enhance, but whose right, not having been exercised from the time of the Permanent Settlement, has been taken away by the 15th section of that Act. **HURRONATH ROY v. GOBIND CHUNDER DUTT** xv P. C. 120

20. — *Act X of 1859, s. 15—Presumption.* In determining whether a party is entitled to the benefit of the presumption under s. 15, Act X of 1859, or not, the question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed within twenty years prior to the institution of the suit. **AHMED ALI v. GOLAM GAFAR**.

[iii Ap. 40]

21. — *Purchaser at revenue sale—Act I of 1845, s. 26—Act X of 1859, ss. 1, 3, 4.* Ryots who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement, are not liable to have their rents enhanced even at the suit of a purchaser at a sale for arrears of revenue under Act I of 1845. **HURRYHUR MOOKERJEE v. MOHESH CHUNDER BANERJEE** Sup. Vol. 623

22. — *Act X of 1859, ss. 3, 4—Presumption.* In a suit for enhancement of rent, a ryot is not to be precluded from the benefit of the presumption under s. 4 of Act X of 1859, on proof of having held at a fixed rent for a

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period of twenty years, merely because he has failed to prove a patta which he has set up not inconsistent with that presumption. **GIRISH CHANDRA BOSE v. KALI KRISHNA HALDAR**, [Sup. Vol. 538]

23. — *Act X of 1859, s. 4—Pleadings.* *Per* NORMAN and HOBHOUSE, JJ. (BAYLEY, J., dissenting), *held* that, in the present case, the defendant had not, either in the written statement filed by him or by his statements in examination, raised the question, whether he was entitled to the benefit of s. 4 of Act X of 1859. **HURRAK SING v. TULSI RAM SAHU** - v 47

24. — *Bhaoli tenure—Act X of 1859, ss. 3 and 4.* *Sembla*.—A tenant who has paid at the same bhaoli rate,—i. e., in kind,—for a period of twenty years, is entitled to the presumption of s. 4, Act X of 1859, and to exemption from enhancement under s. 3. **RAM DAYAL SINGH v. LATCHMI NARAYAN** - - - vi Ap. 25

25. — A tenant is not entitled to the presumption, under s. 4 of Act X of 1859, of having held his tenure at a uniform jammas from the Permanent Settlement, when it appears from his pleadings that his holding first began under a patta at a period subsequent to the Permanent Settlement, and he does not allege that he held the land previous to his obtaining the patta. **KUNDA MISSEER v. GANESH SINGH**, [vi Ap. 120]

26. — In a suit for enhancement of rent the ryot pleaded that he had held certain lands from generation to generation at a uniform rate; that he was, therefore, entitled to claim the presumption arising under s. 4, Act X of 1859; and that he should be allowed to date his claim from the date of the Permanent Settlement. *Held*, that he was entitled to such presumption on showing that he had paid rent at a uniform rate for a period of twenty years previous to the suit. **MITRAJIT SINGH v. TUNDAN SINGH** - - - - - iii Ap. 88

27. — *Act X of 1859, s. 4—Rent changed in amount but at same rate.* The words of s. 4, Act X of 1859, refer to the rate as well as the amount of rent. Therefore, where from 1839 to 1858 a ryot had paid rent at the same rate, but in 1856 the rent was by order of the Civil Court changed, and a proportionate amount remitted in consequence of a portion of the land having been lost by diluvion, *held*, that the remaining portion of the rent being levied at the same rate as before, the ryot had not lost his right to avail himself of the provisions of s. 4, Act X of 1859. **RIAZUNISSA v. TEKUN JHA** - - - - - i S. N. xviii

28. — *Act X of 1859, s. 4—Consolidation of jammas.* A consolidation of jammas into one tenure does not deprive the ryot of the benefit of the presumption under s. 4, Act X of 1859, if it can be shown that the rent has not been changed. This principle applies also to jammas which have been derived in part or in whole with the consent of the landlord, and which are subsequently consolidated into one jamma. The presumptions of s. 4 are not

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restricted to holdings, but refer simply to the fact that land has been held by a ryot at a rent which has not been changed for twenty years before the commencement of the suit. **RAJ KISHORE MOOKERJEE v. HUREEHUR MOOKERJEE** — — — — — i S. N. viii

29. — *Act X of 1859, ss. 5, 6, and 13—Adjustment, mode of—Proportion, rule of.* When there has been an increase in the value of the produce of land arising from an increase in prices, and the zemindar is entitled to a new kabuliati from an occupancy ryot, at an enhanced rate, at fair and equitable rates,—*held per* TREVOR, J. (concurring in by the majority of the Court).—The words 'fair and equitable,' in s. 5, Act X of 1859, are to be construed as equivalent to the varying expressions, 'perganna rates,' 'rates paid for similar lands in the adjacent places,' and 'rates fixed by the law and usage of the country,'—all which expressions indicate that portion of the gross produce calculated in money to which the zemindar is entitled under the custom of the country; that, as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown, that rent is to be presumed, in all cases in which the presumption is not by the nature and express terms of the written contract rebutted, to be the customary rate included in the terms 'perganna rates,' 'rates payable for similar lands in the places adjacent,' and 'rates fixed by the law of the country;' that in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce caused simply by a rise in price, this method of proportion should be adopted—the former rent should bear to the enhanced rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to its present value; that in all cases in which the above presumption is rebutted by the nature and express terms of the written contract, the re-adjustment should be formed on exactly the same principle as that on which the original written contract, which is sought to be superseded, was based; and that in cases in which it appears, from the express terms of the contract, that the rents then made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the ryot to cultivate indigo or other crops, the former rent must be corrected so as to represent the ordinary rate current at the period of the contract, before it can be admitted to form a term in the calculation to be made according to the method of proportion above laid down. *Per* MACPHERSON, J.—The rule of proportion,—as the old value of produce is to the old rent, so is the present value of produce to the rent which ought now to be paid,—is the rule which should be adopted in the absence of any recently adjusted perganna

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customary rates. Either party should be at liberty, in each case, to prove any special circumstances tending to show that the application of the rule of proportion to that particular case would work injustice. *Per* PHEAS, J.—When the Collector is called upon in any given case to determine the rent, which it is fair and equitable that the ryot should pay, he ought to enquire: 1st.—Whether at the last antecedent period, when the arrangement between the parties (either then created or previously existing) was such as must, by reason of tacit acquiescence or otherwise, be taken to have been fair and equitable, that arrangement contained express stipulations as to rent; if so, then these stipulations, unless the reason for them is gone, should be followed in arriving at the rent for the new patta. 2nd.—If the Collector finds no express agreement to guide him, then he must ascertain whether the ryot is legally entitled by custom, based either on his personal status, or on the character of the land occupied by him, to any definite share of the produce of the land, or to any beneficial interest in it. If the ryot is so entitled, the rent must be adjusted accordingly. 3rd.—If neither express agreement, nor legal right in the ryot, be found to have determined the amount of rent, the last arrangement must have been governed by some locally prevailing custom, or the rent regulated, tacitly, according to some locally prevailing rates; and in that case the custom ought to be complied with, and the rates adhered to. The fair presumption will be, in the absence of evidence, or unless a different foundation be actually shown, that the rate was originally based upon the principle of sharing the produce of the land between the ryot and zemindar in a fixed ratio. The result of applying this presumption would be that the new fair and equitable rent would be the same proportionate part of the new produce that the old rent was of the old produce. In all cases, the duration of the intended patta must be taken into consideration as an element affecting the question of fairness and equity. *Per* NORMAN, J.—(1.) With respect to the rents of ryots having mere rights of occupancy, a zemindar is entitled to claim from his ryots such rents as are paid by the same class of ryots for land of a similar description and with similar advantages in places adjacent. (2.) If such rents are too low, and the zemindar simply allege that the value of the produce has become increased, otherwise than by the agency, or at the expense, of the ryot, he shows an increase in the value of that which primarily belongs to the producer, to a proportion of which alone the zemindar is entitled. It is only necessary to give the zemindar an amount of rent which shall bear the same proportion to the old rent which the present price of the produce does to the former. It must be taken that the old rent was fair and equitable. It is for the zemindar to prove his case, and he must carry back his evidence, as nearly as he can, to the time when the rent was fixed. (3.) If the rent

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consists partly of money, and partly of services, or something equivalent to services, as an obligation to cultivate and supply indigo at a certain price, the value of such contract would have to be estimated and added to the old rent; and in such cases the aggregate value would form a term in the proportion.

(4.) If a ryot is holding below the rates paid by his neighbours, and in consequence of the increase of the value of the produce, these rates are themselves too low, the zemindar may be entitled to the benefit of both grounds of enhancement in the same suit. (5.) The cost of cultivation, in the absence of evidence to the contrary, may be taken roughly to have increased in a ratio proportionate to that of the increased price of produce. But in exceptional cases it may be found that the particular crop for which the land is specially fitted, as cotton, or crops on land in the vicinity of a town, has greatly increased in value without any general equivalent rise in the price of labour, or the cost of food. In such cases, if the zemindar is not in a position to make out a case under the first clause, the increased profit may be divided between the zemindar and the tenant, as may appear reasonable under the special circumstances of the case; and in like manner any extraordinary increase in the cost of production may be proved by the ryot in answer to the claim for enhancement on the ground of the enhanced price of produce. (6.) If the productive powers have increased from other causes, as in the case of lands protected from flooding by the embankments of the railway, without increase of outlay or labour by the tenant, the whole of such increase belongs to the zemindar, subject to any increased expenses which may be caused to the tenant by the collection or realization of the larger profit. *Per* PEACOCK, C. J. (dissenting).—The rule of proportion is not applicable.

The rule laid down in *Ishore Ghose v. James Hills* should be followed. The definition of 'rent' by Malthus in his *Principles of Political Economy* is the guide. Rent is "that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being." In considering whether the whole of the increased value of the produce is to be added to the rent, the Court must be guided by all the circumstances of the case. It may take the old rent as a fair and equitable rent with reference to the former value of the produce. It must take into consideration the circumstances under which the value of the produce has increased, and whether these circumstances are likely to continue. It must also consider whether the costs of production, including fair and reasonable wages for labour, and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased; and if so, it must make a fair allowance on

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that account. It is only the net increase, or such part of the net increase, as will render the rent fair and equitable that can be added to it. *THAKOORANEE DOSSEE v. BISHESHUR MOOKERJEE* - - - - - *Sup. Vol. 202*

30. — In coming to a conclusion as to whether the produce or the productive powers of the land have increased otherwise than by the agency or at the expense of the ryot, the average of four or five years ought to be taken; the increase of an exceptional year should not be the guide. *RAJKRISHNA MOOKERJEE v. KALEE CHARAN DOBAIN*, vi Ap. 123

31. — *Intermediate tenures—Deduction.* A deduction of 15 per cent. from the gross rent is a fair and equitable mode of assessing the rent payable by an intermediate tenant in a suit for enhancement. Intermediate tenures should be assessed at a rate so as to allow the tenant a reasonable profit, and not at a rate at which actual cultivators are assessed. *SWARNAMAYI v. GAURI PRASAD DASS*, iii A. C. 270

32. — *Notice of enhancement—Ground of enhancement—Act X of 1859, s. 13.* S. 13 of Act X of 1859 is applicable not merely to ryots having rights of occupancy, but to all under-tenants and ryots. The landlord cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance without notice specifying the grounds of enhancement. *BAKRANATH MANDAL v. BINODRAM SEN* - - - - - i F. B. 25

33. — A notice under s. 13, Act X of 1859, for enhancement of rent upon land held by a ryot in excess of the land for which he pays rent to the zemindar, must state the quantity of land so held in excess. The mere statement of 'excess land' is not a sufficient compliance with the provisions of the law. *GRISH CHANDRA GHOSE v. ISWAR CHANDRA MOOKERJEE*, [iii A. C. 337]

34. — A suit for enhancement of rent cannot be supported without there has been a previous service of notice under Act X of 1859, s. 13. *AKHAY SUNKUR CHUCKERBUTTY v. INDRA BHUSUN DEB ROY* - - - - - iv F. B. 58

35. — *Notice of enhancement—Sufficiency of Act X of 1859, s. 17.* A notice of enhancement which did not set forth grounds of enhancement in the words of s. 17, Act X of 1859, held not a sufficient notice. *RAM SABAN SING v. BHAJAN DOBAY KARPADAZ* - - - - - vi Ap. 155

36. — Suit for enhancement of rent dismissed on the ground of the insufficiency of the notice of enhancement in not specifying the grounds on which it was sought in accordance with s. 17, Act X of 1859. *DINANATH DASS v. GUGAN CHANDRA SEN* - - - - - vii Ap. 45 note

KALINATH CHOWDRY v. HUMI BIBI, [vii Ap. 47 note]

37. — Notice of enhancement should distinctly set forth the grounds upon which enhancement of rent is sought. Notice of enhancement to the effect "that as the rent of the land" (in the occupation of the tenant) "is

ENHANCEMENT OF RENT—continued.

below the rates prevailing in the parganna and in adjacent places, and as the productive powers of the land and the value of the produce have increased, and as the patit lands have been cultivated, I am entitled to receive from you Rs. 794-5-7-11½ per annum," was held to be indefinite and uncertain; and therefore no suit thereon could lie for enhancement of rent. **GOBIND KUMAR CHOWDREY v. HURO CHANDRA NAG** - - - iv Ap. 61
KALI CHANDRA CHOWDHREY v. RATAN GOPAL BHADHURI - - - - - iv Ap. 62 note

38. — A notice of enhancement held to be sufficient although it did not specify in terms the clause or section of the Act under which enhancement was sought. **KUMAR PARESH NARAIN ROY v. GAUR SUNKUR BHUMICK** vi Ap. 154
RADHA BALLAB GHOSE v. BEHARILAL MOOKERJEE - - - - - vi Ap. 155

39. — A notice of enhancement stated that "you the defendants pay less than other ryots in the neighbourhood, and therefore you are to pay for the future such and such rates" held not a sufficient notice as contemplated by s. 17, Act X of 1859. **SHEMSULOSMAN v. BANSIDHAR DUTT** - - - - - -vii Ap. 32

40. — In a suit for enhancement of rent of an intermediate tenure, a notice to the following effect was held sufficient: "You (defendant) hold a takhashi talook, the rent of which has always been of a varying nature; you have been called upon to make a settlement with your landlord at the parganna rates; by the immemorial custom of the parganna, the holders of such talooks as yours, after deducting 10 per cent. of the fair jamma for collection charges, and 10 per cent. for malikana, are bound to pay the residue as rent to the zemindar. You hold so much land which, according to rates paid for similar kinds of land in the same and adjacent villages, ought to pay such and such a gross rental; from this deducting your 20 per cent. on account of malikana and collection charges, the remainder (so much) ought to be paid to me as my rent, and you are hereby called upon to pay that amount." **JANNOBA v. GIRISH CHANDRA CHUCKERBUTTY**, [vii Ap. 44]

41. — Where substituted service of notice of enhancement is resorted to under Reg. V of 1812, s. 10, the Courts should take care to be first satisfied that the person who ought to be served personally is keeping out of the way. **RAMCHUNDER DUTT v. JOGESHCHUNDER DUTT**, [xii P. C. 229]

42. — Act X of 1859, s. 13—*Service of notice of enhancement.* Where a zemindar served a notice of enhancement of rent on the ryots of a mauza, and afterwards granted a lease of the mauza to the plaintiff, held, the plaintiff was entitled to sue for enhancement upon the notice already served. **KHASKI ROY v. FARZAND ALI KHAN** - - - - - ix 125

ENTICING AWAY MARRIED WOMAN.

See PENAL CODE, s. 498.

EQUITABLE MORTGAGE.

See DEPOSIT OF TITLE-DEEDS.

EQUITY OF REDEMPTION.

See MORTGAGE.

2. — *Execution of decrees—Attachment—Money-decree.* *Semble.*—An equity of redemption cannot be taken in execution of a decree for a money debt under the attachment clauses of Act VIII of 1859. **BRAJANATH KUNDU CHOWDHREY v. GOBIND MANI DAS** iv O. C. 83

3. — *Sale of equity of redemption and purchase by mortgagee.* Under Act VIII of 1859 an equity of redemption can be sold in execution of a decree. **SARASWATI DEBI v. NABADWIP CHANDRA GOSSAIN** - - - v 380

4. — A mortgagee cannot, properly, in execution of a simple decree for money, the repayment of which is secured by mortgage, attach and sell the mortgagor's equity of redemption in the property mortgaged; but if he do so, and purchase it himself, he becomes a trustee for the mortgagor, against whom he cannot acquire an irredeemable title. **KAMINI DEBI v. RAMLOCHUN SIRCAR** - - - - - v 450

5. — A mortgagee having obtained judgment on the covenant in a mortgage deed, cannot, by becoming the purchaser at a sale of the mortgaged property in execution of his decree, deprive the mortgagor of his right of redemption. An injunction was granted to restrain the sale. **RAM LOCHUN SIRCAR v. KAMINI DEBI** - - - - - v 460 note
 Same case on appeal (x 60 note), where the decision, however, seems to have been confined to the special circumstances of the case.

EQUITY OF REDEMPTION, SURRENDER OF.

See LIMITATION ACT X OF 1859, s. 1, CL. 13

VENDOR AND PURCHASER.

ERROR NOT AFFECTING THE MERITS OF THE CASE.

See APPELLATE COURT.

ERROR IN LAW.

See SPECIAL APPEAL.

ERROR IN LAW, SETTING ASIDE CONVICTION FOR.

See ACCOMPLICE.

CRIMINAL PROCEDURE CODE (X OF 1872), s. 294.

ESCHEAT.

See ILLEGITIMACY.

2. — *Onus probandi—Jus Tertii.* In a suit by the Crown claiming lands as an escheat, which are admittedly in the possession of the party claiming as heirs, the onus is on the Crown to show that the last proprietor died without heirs. It is open to the defendant in such a suit to set up any *jus tertii* to bar the claim of the Crown. **GIRIDHARI LALL ROY v. GOVT. OF BENGAL** - - - - - i P. C. 44

3. — *Territorial law of India.* The illegitimate son of an Englishman by a Mahomedan woman died intestate without lawful issue, leaving him surviving his mother, his

ESCHEAT—continued.

mistress, and several illegitimate children. *Held*, that his property passed to the Crown in default of heirs. The territorial law of British India is a modified form of English law. *SECRETARY OF STATE v. ADMINISTRATOR-GENERAL OF BENGAL* - - - i O. C. 87

ESTATES-TAIL.

See HINDU LAW, WILL.

ESTOPPEL.

See BILL OF LADING.

DECREE.

FRAUD.

ILLEGITIMACY.

JUDGMENT IN REM.

LACHES.

MAHOMEDAN LAW, PRE-EMPTION.

VENDOR AND PURCHASER.

2. — *Payment of rent—Title.*] In a suit for rent by a patnidar, who claimed under a lease granted him by a Hindu widow, whose husband had left a will giving her no power to alienate, *held*, that although it was shown that the widow had been in receipt of rents, the suit was rightly dismissed. One who pays rent to another, believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that other: so here the defendant was not estopped from showing that, under the deceased husband's will, the plaintiff had no title. *BANEE MADHUB GHOSE v. THAKOORDAS MUNDUL*, [Sup. Vol. 538]

3. — *Suit for declaration of title.*] Where the defendant resists the plaintiff's title, he is estopped from afterwards objecting that a suit for a declaratory decree will not lie. *SHRIB JATON ROY v. PANCHANAN BOSE*, [iii Ap. 55]

4. — *Execution of deed of partition—Vendor and purchaser—Intention of parties as evidenced by their acts.*] Whatever may be the real intention amongst themselves of some of the members of a Hindu joint family in executing a deed of partition, purchasers from them have an undoubted right to bind them by the execution of the deed and their public acts attending it, to the fulfilment of those obligations which such public acts cast upon them. *SUKHIMANI DASI v. MAHENDRO NATH DUTT* - - - -iv P. C. 16

5. — *Suit for rent—Landlord and tenant—Parol evidence to prove different title to that in lease.*] A. executed a kabullat for a term of years to B. as zemindar. B. gave a patni of the zemindari to C. C. instituted a suit for arrears of rent under the lease for a term of years against A., the lessee. A., in defence, admitted the execution of the lease to B., but denied that B. was his real lessor and beneficially entitled to the rent, alleging that B. was only a benamidar for a third party. *Held*, that in India the English doctrine of estoppel did not apply, and that A. was competent in a suit for rent to deny his lessor's title

ESTOPPEL—continued.

as stated in the lease, and by parol evidence to prove a different title to that recited in the lease. *DONZELLE v. KADERNATH CHUCKERBUTTY* - - - - - vii 720
But see *JAINARAYAN BOSE v. KADUMBINI DASI* - - - - - vii 723 note

6. — *Pleadings.*] *Held*, that the defendants having, in a previous suit, set up the defence that K. was disqualified by insanity, and taken the decision of the Court on that ground, were estopped now from setting up the defence that he was not so disqualified, and that he was entitled to succeed. *BRIJ-BHOOKUN LAL AWASTEE v. MAHADEO DOBEY*, [xv 145 note]

7. — *Deed, construction of.*] Those who rely upon a document as an estoppel must clearly establish its meaning; if there is any ambiguity, the construction may be aided by looking at the surrounding circumstances. *MEWA KUWAR v. HULAS KUWAR*, xiii P. C. 312

8. — *Admission.*] Where parties allow a suit to be conducted in the lower Courts as if a certain fact was admitted, they cannot, afterwards, on special appeal, question it, and recede from the tacit admission. *MOHIMA CHUNDER ROY CHOWDREY v. RAM KISHORE ACHARJEE CHOWDREY* - - - - xv 142

9. — *Agreement of parties—Irregular procedure.*] Where a Court has a general jurisdiction over the subject-matter of a claim, parties may be held to an agreement that the questions between them should be heard and determined by proceedings contrary to the ordinary *curiam curie*. *SADASIVA PILLAI v. RAMALINGA PILLAI* - - - - xv P. C. 383

10. — *Civil Procedure Code, s. 2.*] The doctrine laid down in the Duchess of Kingston's case as to estoppel by judgment, is applicable to cases tried under the Civil Procedure Code, s. 2 of which is consistent with that rule. *KHUGOWLEE SINGH v. HOSSEIN BUX KHAN*, [vii P. C. 367]

EUROPEAN BRITISH SUBJECT.

See JURISDICTION OF CRIMINAL COURTS.

MAJORITY, AGE OF.

OFFENCE COMMITTED ON THE HIGH SEAS.

EVIDENCE.

See ACCOMPLICE.

ACCOUNT, ADJUSTMENT OF.

APPROVERS.

BENAMI PURCHASE.

CHUR LANDS.

COMMISSION.

JUDGMENT IN REM.

OATHS ACT.

POSSESSION.

PRIVY COUNCIL, PRACTICE OF.

SANAD.

WITNESSES.

EVIDENCE—continued.

CIVIL CASES.

2. — *Mode of dealing with.*] The mode in which evidence is to be dealt with discussed. **MATHURA PANDEY v. RAM RUCHA TEWARI,**

[iii A. C. 108]

BHAJU SING v. KAIFNATH TEWARI,

[iii A. C. 332]

3. — *Deed on two pieces of paper of different dates — Handwriting—Forgery.*] Where the Judge of first instance doubted the authority of a deed, it being written on two pieces of stamped paper of different dates,—*held*, under the circumstances, not to be a proper deduction. Where evidence could have been adduced, and was not, as to a handwriting being forged, and the Judge by comparison with other handwriting held it to be a forgery, such finding was disapproved of. **KURALI PRASAD MISSEER v. ANANTARAM HAJRA** viii P. C. 490

4. — *Reasons for disbelief.*] Where the lower Appellate Court was directed by the High Court to try a particular point, *viz.*, whether the plaintiff had proved actual possession within twelve years of suit, and the Court, in dealing with the evidence, observed that it would not rely on private documents and on the witnesses, as “they were not of much importance, and were easily procured,” and rejected survey papers coming from proper custody, as being papers easy to alter, and therefore not reliable, the High Court, in remanding the case, *held*, that this was a most improper mode of treating the evidence. If the Court disbelieved particular witnesses or refused to receive certain documents, it should give its reasons for the refusal with reference to these documents in particular, or for its disbelief of the particular witnesses, and not with reference to documents or witnesses in general. **CHANDRA MADHAB ROY v. KHEMAMANI DAS,**

[i S. N. xix]

OMAN v. KUMAR PRAMATHANATH ROY,

[i S. N. xxv]

5. — *Unopposed evidence — Suit for damages.*] In a suit to recover damages caused by the defendants plundering the house of the plaintiff, the Court of first instance passed, upon the evidence of two witnesses, a decree in favour of the plaintiff. On appeal by some of the defendants, the Judges of the Sudder Dewanny Adalat of Agra held, that the fact of plunder was not proved, and dismissed the suit as against all the defendants. *Held* by the Privy Council that, as the defendants did not come forward to exculpate themselves by their own evidence, and as the evidence in support of the charge was unopposed, the decree of the Court of first instance could not be set aside. **GANESH SINGH v. RAM RAJA** — iii P. C. 44

6. — *Suit for damages for assault—Previous conviction of defendant.*] In a suit for damages for an assault, the previous conviction of the defendant in a Criminal Court is no evidence of the assault. The factum of the assault must be tried in the Civil Court. **ALI BUKSH v. SHEIKH SAMIRUDDIN** — ii A. C. 31

EVIDENCE (Civil Cases)—continued.

7. — *Receipts for rent.*] To prove receipts, it is not necessary to produce the writer of them. The ryot can prove his own receipts. **GANGA NARAYAN DAS v. SARODA MOHAN ROY CHOWDHRY** — — — — — iii A. C. 230

8. — *Receipts for rent.*] Dakhilas or rent-receipts filed by a ryot in a suit for arrears of rent or for enhancement must be proved, whether denied by the zemindar or not. **KIRTEE-BASH MAYETEE v. RAMDHUN KHORIA,**

[Sup. Vol. 658]

9. — *Document—Proper custody.*] A document thirty years old does not prove itself, in the absence of evidence, that it has come from the proper custody. **GURU DAS DEY v. SAMBHU NATH CHUCKERBUTTY** — — — — — iii A. C. 258

10. — *Isamnavisi papers — Enhancement of rent — Possession.*] In a suit by a purchaser of a patni at a sale for arrears of rent to enhance the rent of the ghatwal under Reg. VIII of 1819,—*held*, that isamnavisi papers for 1811—1813, stating that the amount held by the ghatwal was 100 bigas, did not entitle the plaintiff to enhance the rent of the surplus over that 100 bigas in the face of satisfactory oral evidence of long uninterrupted possession. **FARQUHARSON v. DWARKANATH SINGH** — — — — — viii P. C. 504

11. — *Jamabandi papers.*] Jamabandi papers can be used only as corroborative evidence. **GAJJO KOER v. SYUD ALLY AHMED,**

[vi Ap. 62]

12. — *Endorsement—Deed of sale.*] The plaintiff executed a deed of sale of a moiety, and a lease of the other moiety, of certain land to B. B. instituted a suit under Act XIV of 1859, which was dismissed. B. then returned the deed of sale and lease to A., with the following endorsement under his signature, *viz.*, “returned, no claim.” A. instituted the present suit for recovery of possession of the said property, and the defendant set up in his defence that A. had no right to sue for a moiety of the property, as the same had been conveyed to B.; and that the endorsement of the deed of sale, “returned, no claim,” was not admissible in evidence, as the same had not been registered. *Held*, that the entry was only evidence that the transaction was inchoate, and not final, so as to require a reconveyance. **GIRISH CHANDRA ROY CHOWDREY v. AMINA KHATUN,**

[iii Ap. 125]

13. — *Partnership books—Act II of 1855, s. 53.*] A. & Co. and B. & Co. entered into a joint adventure in opium. A. & Co. were to send money to various places to be handed to the agents, who were to buy and sell. They now claimed against B. & Co. for money alleged to have been so sent after giving credit for sums received. The proof was the arrival of the money at A. & Co.'s places of business, supported by entries in A. & Co.'s books at each place, but there was no proof of payment to the agents save such entries. As to remittances to the other places, the only evidence was the books of A. & Co. at the

EVIDENCE (Civil Cases)—continued.

place of despatch. *Held*, that there was no evidence as to the latter claims; and as to the former, although the evidence appeared insufficient, the case would not be remanded, as the appellant, independent of these claims, had a balance against them. **SETH LAKHMI CHAND v. SETH INDRA MULL** - iv P. C. 81

14. — *Account books, entries in.* Where a Judge considered it inequitable to reject plaintiff's books when they made for him, *viz.*, as to amounts lent to defendant, and to accept them when they were against his interest, *viz.*, in the amount of repayments credited to defendant, and therefore disregarded both descriptions of entries equally, but gave a decree in plaintiff's favour for such entries as were proved, without deducting the items credited to defendant, — *held*, that entries in an account book, whether on the credit or debit side of the account, are not conclusive evidence either of amounts paid or of sums actually due which the Judge is bound to believe. The Judge was bound to look at the whole of the entries in the plaintiff's book, to give credit to such of them as he believed to be true, and to discredit those, if any, which he believed to be false. **ISAN CHANDRA SINGH v. HARAN SIRDAR**, [iii A. C. 135]

15. — *Lunacy—Evidence as to common report.* Where the fact of lunacy was admitted, and the question was the date at which it commenced, the evidence of a planter in the neighbourhood as to common report for years in the village as to the lunacy, having been admitted by the lower Court, the Judicial Committee refused to reject it. The rule as to admission of evidence laid down by Dr. Lushington in *Unide Rajah Raje Bommarauze v. Pemmasamy Venkataadry Naidoo* (7 Moore's I. A. 137) followed. **BODHNARAIN SING v. UMBRAO SING; AJODHYA PRASAD SING v. UMBRAO SING**, [vi P. C. 509]

16. — *Suit on decree of Small Cause Court—Certified copy of record.* In suits on decrees of the Small Cause Court, Calcutta, a copy of the record duly certified by the clerk of the Court, if it appears from such copy that the original has been duly authenticated by the Judge, is sufficient to prove the decree. **HARONARAYAN v. MANIK SINGH** - vii Ap. 61

17. — *Record of proceedings of Small Cause Court—Summons-book.* The summons-book of the Small Cause Court, Calcutta, is admissible in evidence, though not signed by the presiding Judge. **QUEEN v. NAKUR SIRCAR** vi 729

18. — The record of proceedings in the Small Cause Court is not admissible in evidence unless authenticated by the signature of the presiding Judge. **QUEEN v. SHIB CHANDRA DOSS** - - - - vi 730 note

19. — *Depositions—Living witnesses.* Depositions of witnesses in a former suit are not admissible in evidence when those witnesses are living, and their oral evidence is procurable. **HARISH CHUNDER CHUCKERBUTTY v. TARA CHAND SHAHA** - - - - ii Ap. 4

EVIDENCE (Civil Cases)—continued.

20. — *Title to stolen property—Verdict of Criminal Court.* The verdict of a Criminal Court with respect to the alleged theft of notes is no evidence of the ownership of such notes. **PANNA LALL v. GOPIRAM BUZURIAH**, [iii Ap. 2]

21. — *Admissibility of—Fact of possession.* A statement by a witness that a party was in possession is in point of law admissible evidence of the fact that such party was in possession. **MANIRAM DEB v. DEBI CHARAN DEB**, [iv F. B. 97]

22. — *Instalment-bond—Unregistered patta and kabuliati—Set-off.* Plaintiff sued in a Small Cause Court, on an instalment-bond, for Rs. 81. The bond had been executed for *nuzzur* or *salami* contemporaneously with the execution of a patta and kabuliati, by which the defendants agreed to pay the plaintiff Rs. 335 a year, for two years, as rent for certain land. The patta and kabuliati had not been registered. A previous suit brought by the plaintiff under Act X of 1859 had been, therefore, dismissed, and no oral evidence was admitted to prove the terms of the patta and kabuliati. The defendants now claimed a set-off against the amount claimed under the bond on the footing of a contract contained in the patta and kabuliati. The Judge refused to receive them in evidence, or to receive oral evidence of their contents, and gave a decree in favour of the plaintiff, subject to the opinion of the High Court. *Held*, the defendant having benefited in the Act X suit by the fact that no oral evidence had been admitted to prove the contents of the patta and kabuliati, it would have been contrary to rule and inequitable to admit such evidence now in support of his claim of set-off. **DINANATH MOOKERJEE v. DEBNATH MULLICK** - - - - v Ap. 1

23. — *Decree for possession—Act XIV of 1859, s. 15.* A decree for possession in a suit under s. 15 of Act XIV of 1859 is *prima facie* evidence that the plaintiff in that suit is entitled to recover from the defendant therein mesne profits for the period of dispossession. **RADHA CHURN GHATAK v. ZAMIRUNNISSA KHANUM** - - - - ii A. C. 67

24. — *Judgment in former suit—Subsequent suit brought by strangers to former suit.* The judgment in a former suit against the same defendants in respect of the same subject-matter is admissible, though not conclusive, evidence against the defendants in a subsequent suit brought against them by other parties. **LALA RANGLAL v. DEONARAYAN TEWARY** - - - - vi 69

25. — *Decree barred by limitation.* A decree for rent is admissible in evidence against a defendant to prove the rate of rent he was liable to pay, although the decree has not been executed for three years, and has, therefore, become barred under the law of limitation. **BEERCHUNDER MANIK v. RAMKISHEN SHAW**, [xiv P. C. 370]

EVIDENCE (Civil Cases)—continued.

26. — A decree for rent in a suit under Act X of 1859, against the defendant, an intervenor, which has remained unexecuted for more than three years, is not, in a subsequent suit, admissible in evidence to show that the defendant had not, during a period subsequent to the decree, been in *bond fide* receipt of the rent. **RAM SUNDER TEWARI v. SRIMUNT DEWASI** - - - - - xiv 371 note

27. — *Copy of copy of document—Secondary evidence.* An authenticated copy of an authenticated copy of a deed is admissible as secondary evidence; but proof of the execution of the deed itself must be given before the copy can be admitted. **TAYUBUNNISA BIBI v. KUWAR SHAM KISHORE ROY** - - - - - vii 621

28. — A original document upon which the plaintiff based his suit was proved to be in the possession of the defendant. In a previous suit the defendant's mother had filed the document, and on removing it had, according to the rules of practice, placed a copy there instead. The defendant on being summoned failed to produce the same. *Held*, that a copy of such copy, so filed in Court, was admissible as evidence. **MAKBUL ALI v. MASNAD BIBI**, [iii A. C. 54]

29. — *Report and evidence taken by Ameen.* The report of an Ameen and the evidence recorded on a local enquiry are evidence in the suit, and there is no legal objection to the parties to the suit agreeing that the evidence should be taken before the Ameen, and that the matters in dispute should be referred to him for enquiry. **SARAT CHANDRA ROY v. COLLECTOR OF CHITTAGONG** - - - - - ii Ap. 3

30. — An Ameen had been deputed to make a local investigation, and had examined certain witnesses, but could not examine the rest, or complete his investigation and draw up his report, owing to the plaintiff not paying the necessary expenses. *Held*, that the depositions of the witnesses without the Ameen's report were not admissible in evidence. **DEBNARAYAN DEB v. KALI DAS MITTER** - - - - - vi Ap. 70

31. — *Letters between members of a joint family and the karta of the family.* In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree against *R.*, a member of the family, for his separate debt, letters between *B.*, the karta of the family, and *R.*, relative to the purchase by the latter as his separate property of the estate in dispute, were admitted in evidence as against the defendant. **BODH SING DOODHOORIA v. GUNESH CHUNDER SEN**, [xii P. C. 317]

32. — *Account sales.* In an action brought by the plaintiffs for the balance due to them from the defendant in respect of shipments which had been treated by the plaintiffs as consignments on the defendant's account, account-sales furnished by plaintiffs to the defendant were held to be *prima facie* evidence

EVIDENCE (Civil Cases)—continued.

of the amount realized by the sale of the goods mentioned therein. **SHEARMAN v. FLEMING**, [v 619]

PAROL EVIDENCE.

33. — *Parol evidence to vary contents of documents—Mortgage by Hindu pardanashin lady—Execution, proof of.* In a suit to enforce a mortgage against a Hindu pardanashin lady, the Court will look strictly at the circumstances under which the mortgage was executed; and if it appears that she was acting without sufficient advice, that her ignorance was taken advantage of, or that undue influence was exerted to induce her to execute the deed, the Court will refuse to enforce the mortgage. The onus is upon the party interested in upholding the transaction to show the absence of undue influence, and that its terms were fair and equitable. He should show that the party he wishes to bind had good advice in the matter, and acted therein independently of himself. This is especially so when there was any fiduciary relationship between the contracting parties. **KANAI LAL JOWHARI v. KAMINI DEBI** - - - - - i O. C. 31 note

34. — *Statute of Frauds—Variance between bought and sold notes.* The defendant, a Hindu, entered into a contract of sale with the plaintiff through the medium of a broker. The broker made no entry of the contract in his book, and there was a material variance in the bought and sold notes delivered by him. The notes were accepted and retained by the plaintiff and defendant respectively. In an action for non-delivery under the contract, *held*, that the contract was made before the notes were written; the notes were sent by the broker to his principals merely by way of information; and the Statute of Frauds not applying, the plaintiff was at liberty to give parol evidence of the terms of the contract. **CLARTON v. SHAW** - - - - - ix 245

35. — *Execution of deed.* In a suit by a pardah lady to set aside a bill of sale, execution of which by her had been obtained by collusion and fraud, the Court admitted parol evidence to show that the bill of sale was intended by her to operate only as a mortgage and to vary the rate of interest therein stipulated for. **MONOHUR DASS v. BHAGABATI DAS**, [i O. C. 28]

36. — *Inadequacy of consideration.* Parol evidence is not admissible to alter or vary a written document, even if the inadequacy of the consideration and the conduct of the parties show that the transaction was different from what appears in the instrument or writing. **MADHAB CHAND ROY v. GANGADHAR SAMANT** - - - - - iii A. C. 88

37. — *Mortgage—Bill of sale—Suit for specific performance.* In a suit for specific performance of an agreement to convey certain property, the contract, which was in writing, was admitted by the parties; but the defendant alleged that there had been an understanding verbally come to that if he repaid the consideration-money with interest, &c., to the

EVIDENCE (Parol Evidence)—continued.

plaintiff within two years, the plaintiff would reconvey the premises to him,—*held*, that the defendant could give parol evidence to supplement the written contract, and show that it was intended to be a mortgage, and not an absolute bill of sale. *BHOLANATH KHETTHI v. KALIPRASAD AGURWALLA* - - - viii 89

38. — *Intention of parties in execution of deed.* *Per* PEACOCK, C. J., BAYLEY and CAMPBELL, JJ.—Verbal evidence is not admissible to vary or alter the terms of a written contract where there is no fraud or mistake, and in which the parties intend to express in writing what their words import. The parties cannot show by mere verbal evidence that, at the time of the agreement, what they expressed by their words to be an actual sale was intended by them to be a mortgage only. It is, however, material to enquire whether, having regard to the acts and conduct of the parties, and having reference to the amount of the alleged purchase-money and the real value of the interest to be sold, the parties intended the writing to operate as an absolute sale, and treated the transaction as such, or as a mortgage only. *Per* NORMAN and PUNDIT, JJ.—Parol evidence is admissible to show that a bill of sale, though absolute in its terms, was a mortgage. *KASHI NATH CHATTERJEE v. CHANDI CHARAN BANERJEE* - - - Sup. Vol. 383

39. — *A.*, by a deed purporting to be a deed of absolute sale, conveyed certain property to *B.* The deed was registered. *C.* claimed a right of pre-emption. *Held per* PEACOCK, C. J., BAYLEY and CAMPBELL, JJ. (NORMAN and PUNDIT, JJ., dissenting), that the acts of the original parties or their statements could be admitted as against a third party to prove that their intention was different from that which their written deed expressed and was intended by them to express. *MALUK CHAND SURMA v. KARLU CHANDRA SURMA* - - - Sup. Vol. 399

40. — A suit was brought on a promissory note by which the defendant promised to pay to the plaintiff Rs. 1,000 with interest. The defendant afterwards wrote the following letter to *W.*: "I further hold myself responsible to you for the two sums of Rs. 1,000 and Rs. 900 respectively, the latter sum bearing interest at 24 per cent. per annum. Both these sums of Rs. 1,000 and Rs. 900 I engage to pay you." *Held*, that parol evidence was admissible to show that, though the letter was addressed to *W.*, the plaintiff *S.* was the person referred to as *W.*, and that the letter was given to her. Parol evidence was also admissible to show what debt was referred to in the acknowledgment, and that it related to the promissory note. *UMESH CHANDRA MOOKERJEE v. SAGEMAN* - - - v 632 note

CRIMINAL CASES.

41. — *Report of Chemical Examiner—Criminal Procedure Code (Act XXV of 1861), s. 370.* Under s. 370, Act XXV of 1861, the report of a Chemical Examiner is evidence in a

EVIDENCE (Criminal Cases)—continued.

criminal trial, if it bear the signature of the Examiner. The original should be produced. *QUEEN v. BISWAMBHAR DAS* - - - vi Ap. 123

42. — *Handwriting, knowledge of.* The knowledge by the Sessions Judge of the handwriting of the judicial officer before whom the statement was made is no evidence of the statement having been made before that officer. *QUEEN v. FATIK BISWAS* - - - i A. Cr. 13

43. — *Previous conviction—Report from Record-office.* A *kaifut*, or report from the record office, that *A.* had been convicted of a crime, is no evidence of a previous conviction. *QUEEN v. RAMZAN* - - - vi Ap. 15

44. — *Bad character, evidence of.* Evidence of bad character should not be put before the jury, but is only for consideration of the Judge in determining the sentence to be awarded. *QUEEN v. MAHIMA CHANDRA DAS*, [vi Ap. 108]

45. — *Breach of the peace, likelihood of—Report of Police Officer.* The report made by a police officer that there is a likelihood of there being a breach of the peace is not legal evidence to prove the existence of any dispute likely to cause a breach of the peace. *ABHAYA CHOWDHRY v. BRAE* - - - vi Ap. 148
QUEEN v. BHYRO DAYAL SINGH iii A. Cr. 4
IN THE MATTER OF BHADRESWARI CHOWDHREANI - - - vii 329
IN THE MATTER OF THE PETITION OF SHAMABANKAR MAZUMDAR - - - ix Ap. 45

46. — *Documents not on record before Sessions Judge* Documents which were in the record sent up by the Magistrate, but which were not put in evidence before the Sessions Judge, looked at because they told in favour of the prisoner. *QUEEN v. SOOBIAN* - - - x 333

47. — *Answers given by prisoner to Police Constables or Magistrate.* *G. D.* presented a Government promissory note at the Bank of Bengal bearing a forged endorsement, and was arrested. A police constable asked *N.* if he knew *G. D.* *N.* replied that he knew him as a common man. The police constable then asked *N.* if he knew anything about the note. *N.* replied that he did not. No threat or inducement was held out, nor was any caution administered to *N.* *Held*, that the statements made by *N.* in answer to the questions of the police constable were admissible. *N.* was afterwards brought before *R.*, the Deputy Magistrate of Serampore, who told him, before any depositions were taken, that he (*N.*) was charged with having received a stolen promissory note, and *R.* asked him if he wished to say anything. *N.* replying in the affirmative, *R.*, without administering any caution to him, asked him how or where he had obtained the note, and other questions, the answers to which were taken down. *N.* was again brought up before *R.*, and was asked whether a promissory note then produced was the one he had delivered to *G. D.* to take to the Bank. *R.* told *N.* that he was not bound to answer the question, but if

EVIDENCE (Criminal Cases)—continued.

he did, the answer would be taken down, and that if he objected to answer, that would also be noted. *R.* committed *N.* to take his trial before the High Court. *Held*, that, on the trial, the answer of *N.* to the questions of *R.*, whether *R.* acted as a Justice of the Peace for Bengal or as a Magistrate, were admissible. *QUEEN v. NABADWIP GOSWAMI* - 10 Cr. 15

48. — *Examination of prisoners—Criminal Procedure Code (Act XXV of 1861), s. 205.* A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it, as required by s. 205 of the Code of Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate, and taking his evidence in the matter. *Held*, that the examination of the prisoners was inadmissible in evidence. *QUEEN v. RADHU JANA* - - - - - iii A. Cr. 59

49. — *Document—Misdirection.* Upon a plea of *alibi* by the prisoners that they had left Patna on the 12th April, 1869, and reached Port Canning on the 20th of the same month, and were not at Patna on the 30th May, the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper, one bearing the endorsement of the stamp-vendor as sold on the 13th, and the other on the 18th April, filed on the 20th April, and alleged to bear the verification of the prisoners. No evidence was adduced to prove that the prisoners had signed it. The Judge drew the attention of the jurors to this document, and adverted to it in these terms—"If the written statement was drawn up on an earlier date than the date it bears, it could not have been prepared earlier than the day on which the principal stamp was bought,—i. e. 18th." *Held*, that the document should not have been received in evidence; and that there was a misdirection which contributed materially towards the jury finding the prisoners guilty. *QUEEN v. GAJRAJ* - - - - - iii A. Cr. 43

50. — *Gazette of India—Calcutta Gazette—Act II of 1855, ss. 6 and 8—Official letters.* The *Gazette of India*, or *Calcutta Gazette*, containing official letters on the subject of hostilities between the British Crown and Mahomedan fanatics on the frontier, were rightly admitted in evidence under ss. 6 and 8 of Act II of 1855, as proof of the commencement, continuation, and determination of hostilities. Similarly, under s. 6, a printed letter from the Secretary to the Government of the Punjab, to the Secretary to the Government of India, was properly resorted to by the Court for its aid as a document of reference. It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained. *QUEEN v. AMIR-UDDIN* - - - - - vii 63

EVIDENCE (Criminal Cases)—continued.

51. — *Depositions in former case.* Evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. *QUEEN v. ZULFUKUR KHAN* - - - viii Ap. 21

52. — The prisoners were convicted, under s. 154 of the Indian Penal Code, upon evidence taken in another case to which the prisoners were not parties. The conviction was set aside.

IN THE MATTER OF THE PETITION OF BETTS, [vi Ap. 83]

53. — The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. *Held*, that the depositions were illegally taken, and, therefore, could not sustain a charge. *QUEEN v. RAJKRISHNA MITTER* - 10 Cr. 36

54. — Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them, and put in on their assenting to it as a true record of the facts, *held*, that the proceeding was irregular and prejudicial to the prisoner; that such witness should have been subjected to a fresh oral examination; and that then the former depositions might have been put in not to add to his testimony but to corroborate it. A new trial was ordered. *QUEEN v. BISHONATH PAL*, [iii A. Cr. 20]

55. — *Deposition of dead witness.* When it is proposed to read as evidence the deposition of a witness alleged to be dead, the death of the witness should first be strictly proved; unless it is admitted on the other side, and the reading of the deposition not objected to. *QUEEN v. GAGALU MOYALU* - - - iv Ap. 50

56. — *Letters implicating prisoner found in his house.* Letters, &c., found in a man's house after his arrest are admissible in evidence, if their previous existence has been proved. *QUEEN v. AMIR KHAN* - - - ix 36

57. — *Admissibility of wife's evidence for or against husband or person charged jointly with him.* Upon a criminal trial in the mofussil, the evidence of a wife is admissible for or against her husband or persons charged jointly with him. *NORMAN, J.*, dissented. *QUEEN v. KHYROOLLA* - - - Sup. Vol. Ap. 11

58. — *Deposition.* The evidence of a writer in the Judicial Commissioner's office, to the effect that "the document shown to him is a deposition taken before the Assistant Commissioner; it appears to have been taken in due form upon solemn affirmation, and is attested by the signature of the Assistant Commissioner," is not sufficient evidence of the prisoner having duly deposed. *QUEEN v. MATI KHAWA* - - - - - iii A. Cr. 36

EVIDENCE, ADMISSIBILITY OF.

See APPELLATE COURT.

COMMISSION.

REGISTRATION.

EVIDENCE, DISCOVERY OF FRESH EVIDENCE.

See CIVIL PROCEDURE CODE, s. 355.

EVIDENCE, MODE OF RECORDING.

See CRIMINAL PROCEDURE CODE
(ACT X OF 1872), s. 530.

EVIDENCE ACT (I OF 1872), s. 3—'Court'—Registration Act (VIII of 1871), s. 32—Sub-Registrar—Penal Code, s. 228.] By s. 82 of the Registration Act, a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of s. 228 of the Penal Code, and as he is legally authorized to take evidence, he is a 'Court' as defined by the Evidence Act, s. 3. **IN THE MATTER OF THE PETITION OF SARDHARI LAL.**

[xiii Ap. 40

—, s. 8, III. k.—*Admission—Confession.*] A prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered the loss of the property, and stated his loss to a railway police inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not then being present. This statement was tendered in evidence, and admitted under s. 8, illustration k, of the Evidence Act. Evidence was also tendered of a statement made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him, and that he had bought the rest, and this was admitted; the Court remarking that there was a distinction in the Evidence Act between 'admission' and 'confession.' **QUEEN v. MACDONALD,**

[x Ap. 2

—, s. 24—*Confession made under threat for a purpose other than to extort confession.*] A prisoner was tried for wounding with intent to murder, and wounding with intent to do grievous bodily harm. The offence was committed on the high seas on board a ship on which the prisoner was a seaman. At the trial it was proved for the prosecution that the master of the ship had sailed from Calcutta and could not be found, and the Standing Counsel thereupon tendered in evidence his deposition before the Committing Magistrate, which contained an admission alleged to have been made to the deponent by the prisoner, when in custody. The Court refused to admit the portion of the deposition containing the admission to be read, as it was stated to have been made immediately after the prisoner with others had been threatened by the witness with a loaded rifle; it was immaterial that the threat was not made to extort a confession, but to suppress an attempt at mutiny. **QUEEN v. HICKS** — — — x Ap. 1

—, s. 30 — *Confession of a prisoner when admissible against co-prisoner.*] To render the confession of one prisoner jointly tried with another admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. **QUEEN v. BELAT ALI,**

[x 453

QUEEN v. MOHESH BISWAS — — — x 455 note

EVIDENCE ACT (I OF 1872)—continued.

—, s. 32, cl. 2—*Letter of advice.*] On the trial of a person charged with forging a railway receipt or bill of lading for the purpose of obtaining possession of certain goods which had been sent from Delhi to Calcutta, a letter from the consignee at Delhi to his partner in Calcutta, advising the dispatch of the goods, was tendered in evidence under s. 32, cl. 2 of Act I of 1872 (the Evidence Act), but the Court refused to receive it, and intimated a doubt whether it fell within the instances specified in the section. **QUEEN v. TARINICHARAN DEY,**

[ix Ap. 42

—, s. 32, cl. 7—*Evidence of family custom.*] In a suit to establish the existence of a family custom, the plaintiffs offered in evidence a deed containing a recital that the custom of the family was as alleged in the plaint, and a covenant to do nothing contrary to it. The deed was executed before action brought by the present plaintiffs, and also by a plaintiff who had died since the institution of the suit, and, as the plaint alleged, by "a considerable majority" of the family, but the defendant was not a party to it. *Held*, that the deed was admissible as evidence on behalf of the plaintiffs, though they could themselves be called as witnesses; but that, though admissible, the custom as against the defendant must be proved *aliunde*. **HURRONATH MULLICK v. NITTANUND MULLICK** — — — x 263

—, s. 33 — *Deposition in former suit—Admission.*] A deposition of a person in a suit to which he was not a party, is, in a subsequent suit in which he is a defendant, evidence against him and against those who claim under or purchase from him, although he is alive and has not been called as a witness. S. 33 of the Evidence Act (I of 1872) does not apply to such a deposition, but it is admissible under the sections relating to admissions, although it might be shown that the facts were different from what they were stated to be in the former case. A statement in a bill of sale is evidence against those who are parties to it. **SOOJAN BIBEE v. ACHMUT ALI** — — — — — xiv Ap. 3

2. — *Deposition in former suit.*] *H. N.* died on 16th May, 1854, without issue, leaving a widow *B. B.*, on 19th May, 1856, purported to adopt *S* in accordance with an alleged *anumatipatra* executed by *H. N. R. N.*, the uncle of *H. N.*, died on 6th July, 1855, leaving a widow *M.*, in whose favour he had executed an *anumatipatra*, by the terms of which she was to have the management of his property during the minority of the adopted son, in whom it was to vest on his adoption. *M.* adopted *D.* subsequently to the adoption of *S.* After the death of *R. N., B.*, as widow of *H. N.*, and adoptive mother of *S.*, brought a suit against *M.*, as the widow of *R. N.*, and ignoring the existence of *D.* *D.* died, and on his death *M.* adopted *N.* on 4th April, 1864. In a suit brought by *M.* as the mother and guardian of *N.* to have the adoption of *S.* declared invalid, *held*, that the deposition of certain witnesses who had been

EVIDENCE ACT (I OF 1872), s. 33—continued.

examined in the previous suit to establish the fact of the adoption of *S.* by *B.* were not, under s. 33, Act I of 1872, admissible in evidence against the plaintiff *M. BRINMOYEE DABEA v. BHOOBUNMOYEE DABEA* - xv 1

—, ss. 60 and 67 — *Proof of execution of deed.*] To prove the execution of a bill of sale executed in their favour by the plaintiff's father, the defendants called a kazi, who deposed that the vendor came before him accompanied by witnesses, and acknowledged the execution of the deed, which was then registered. The lower Appellate Court found it was sufficiently proved. On special appeal to the High Court it was contended that the execution was not sufficiently proved under s. 67, Act I of 1872. *Held*, the proof of execution was sufficient, direct evidence of the handwriting of the executant was not necessary under s. 67. It was not intended by s. 60 to exclude circumstantial evidence of things which can be seen, heard or felt. *NEEL KANTO PUNDIT v. JUGGOBUNDOO GHOSE* - xii Ap. 18

—, ss. 74 and 77—*Proceedings between the same parties in another suit—Public documents.*] *B.* instituted a suit in the Court of the Munsif of the 24-Pergannas against *A.* on account of an alleged trespass to a drain which *B.* then alleged to be his property; that suit was dismissed on the ground that *B.* had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by *A.* against *B.* in which *A.* stated it was his property, certified copies of the plaint, the defendant's written statement, and the decree in the former suit were produced; and it was contended they were public documents, and admissible in evidence under ss. 74 and 77 of the Evidence Act. The Court admitted the plaint and rejected the written statement. *MAHOMED SHAHABOODEEN v. WEDGEBERRY* - x Ap. 31

"EX A CERTAIN SHIP," MEANING OF.

See CONTRACT.

EXAMINATION DE BENE ESSE.

See COMMISSION.

EXAMINATION OF ACCUSED PERSON — Act XXV of 1861, s. 205—Act X of 1872, s. 346—*Attestation of Magistrate.*] Under s. 205 of the Criminal Procedure Code it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused and every answer given by him, and that he had had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient; but in case of doubt, oral evidence should be admitted to prove the regularity of the proceedings. *QUEEN v. GOSHTO LAL DUTT* - - - - - vii Ap. 62

2. — It is a matter of discretion for the Magistrate whether, during the enquiry before him, it is right and proper that the accused should be examined or not. But it is undesirable that the accused should be examined by the Magistrate, when he is satisfied that the

EXAMINATION OF ACCUSED PERSON—contd.

evidence adduced by the prosecution does not disclose any proper subject of criminal charge against him. IN THE MATTER OF SHAMA SANKAR BISWAS - - - i S. N. xvi

EXCESS LANDS, SUIT FOR RENT OF.

See LANDLORD AND TENANT.

EXECUTION OF DECREE.

See ACT XXIII of 1861, s. 11.

ATTACHMENT.

BENAMI PURCHASE.

CIVIL PROCEDURE CODE, ss. 200, 204, 206, 207, 208, 210, AND 214.

EQUITY OF REDEMPTION.

HUSBAND AND WIFE.

INSOLVENCY.

INTEREST.

LIMITATION ACT XIV OF 1859, s. 20.

LIMITATION ACT IX OF 1871, SCH. II, No. 167.

MESNE PROFITS.

MORTGAGE.

ONUS PROBANDI.

PARDANASHIN WOMEN.

PRINCIPAL AND SURETY.

SALE IN EXECUTION OF DECREE.

SMALL CAUSE COURT, MOFUSSIL.

2. — *Division of decree.*] A decree cannot be executed, nor can it be seized and sold, in portions. *HABO SANKER SANDYAL v. TARAK CHANDRA BHUTTACHARJEE*,

[iii A. C. 114

3. — *Mortgage — Collateral security — Money-decree on bond.*] The defendants mortgaged certain property in the mofussil to the plaintiffs in April, 1863, and at the same time, as a collateral security to the mortgage, executed a bond in favour of the plaintiffs, and a warrant of attorney to enter up judgment on the bond. Judgment was entered up, and a decree obtained thereon soon after the bond was executed. In accordance with a covenant in the mortgage deed, the mortgagees entered into possession and receipt of the rents and profits of the estate, which they were authorized to receive for five years from the date of the mortgage. They remained in possession for six years, and then, more than one year having elapsed since any proceedings in execution had been taken, they applied for execution of their decree against the mortgaged property. The property was out of the jurisdiction of the Court. *Held* that, if the application were granted, the execution of the decree must be limited to property other than that which was the subject of the mortgage. There being evidence to show that the parties had entered into an agreement for a fresh mortgage of the property for twenty-two years, the application for execution was refused. *BRAJANATH KUNDU CHOWDHRY v. GOBINDMANI DAS*,

[iv O. C. 33

4. — *Seizure in execution—Trespass—Liability of judgment-creditor.*] Seizure of personal property in execution of a decree, is not an act of the Court, but one of the party

EXECUTION OF DECREE—continued.

himself seeking execution, for which he is liable if any trespass be committed on the property of a stranger. *SUBJAN BIBI v. SHEIKH SARIATULLA* - - - iii A. C. 413

RASH BEHARY LALL v. BIBEE WAJAN,
[xii 208 note]

5. — *Mode of execution.*] When a decree is so uncertain that it is impossible to ascertain what is decreed, a plaintiff cannot be put into possession of any other thing by execution than that which the decree describes. Evidence cannot be given in the execution department to amend any uncertainty in the decree. The law allows certain matters to be ascertained in execution, but beyond those it is the duty of the Judge to take care that his decree is so precise that it is capable of execution, without leaving it to the Court of execution to decide what the Judge intended to decree. *DWARKANATH HALDAR v. KAMALAKANTH HALDAR*,

[iii Ap. 128]

6. — *Family dwelling-house—Joint property—Act VIII of 1859, s. 224.*] A decree-holder purchased, in execution of his decree, the right, title, and interest of the judgment-debtor, a member of a joint Hindu family, in the family dwelling-house and land attached. *Held per NORMAN, TREVOR, LOCH, and BAYLEY, JJ.*, that s. 224 of Act VIII of 1859 did not apply; that A. was entitled to actual possession of the share of his judgment-debtor in the house as well as in the land, but his share must be marked out so as to cause the least possible inconvenience to the other members of the family. *Per KEMP, J.*—An equivalent in value of the share in the house should be apportioned to him out of the land, which greatly exceeded the dwelling-house in value. *KOWAR BIJOI KESAL ROY v. SAMASUNDARI* - - - Sup. Vol. 172

7. — *Joint and several liability—Execution of joint decree.*] On 29th November, 1861, A. obtained a decree against B., C., D., and others in the following terms:—That “the suit be decreed with meane profits as far as they can be ascertained to be charged upon all the defendants jointly and severally; the costs of the plaintiff to be paid by the defendants, and each of the defendants to pay his or her own costs.” On 6th October, 1866, C. instituted a suit against A. to have the sale of certain manzas, which had taken place in execution of A.’s decree, set aside. This suit was decided by the High Court in favour of C., and the decision was confirmed by the Privy Council on 14th June, 1872. In the meanwhile A. proceeded to execute his decree as against B. and D.; D. objected; the lower Court allowed her objections, and the High Court on appeal, on 12th December, 1866, affirmed that decision. The lower Court allowed A. to proceed to execute his decree as against B., and on 2nd June, 1866, certain property belonging to B. was sold in execution of A.’s decree, and purchased by A. On 8th August, 1866, the Court duly confirmed the sale, and ordered the

EXECUTION OF DECREE—continued.

suit to be struck off the file. On 5th July, 1869, A., stating that there was still a sum of money due to him under the decree of 29th November, 1861, made an application praying that the suit might be restored to the file, and that the rights of B. in certain property might be put up for sale. *Held*, that A.’s decree being a joint one, he was entitled to execute it against any of the defendants he might select. *CHOWDEY SHEIKH WAHED ALI v. MULLICK ENAYET HOSSAIN ALI* xii 500
SREENATH GHOSH v. SAHIB RAM ROY,
[xii 504 note]

8. — *Joint decree, satisfaction of—Representatives of decree-holder.*] Where two joint-decree-holders, each interested in an eight-anna share in a money-decree, issued joint execution, and one of them, after the death of the other, received the whole amount due under the decree,—*held* that this was only satisfaction as respects half of the decree, and that the representatives of the deceased were entitled to issue execution for the remaining half. *MOHIMA CHANDRA ROY v. PYARY MOHUN CHOWDHRY* - - - ii Ap. 43

9. — *Joint-decree—Execution by one creditor.*] A. and B. obtained a decree against C. A. obtained an order for execution of his share in the amount of the decree. C. pledged immoveable property as security to A., who caused it to be sold. B. applied to the Court for her share of the sale proceeds. The Principal Sudder Ameen refused the application. On appeal—*held*, that the order for execution ought, in express terms, to have reserved the rights of the other decree-holders to share in the proceeds of the execution. The case was sent back that the Principal Sudder Ameen might apportion the amount realized amongst all the decree-holders. *TARASUNDARI BURMONI v. BEHARI LAL ROY* i A. C. 28

10. — *Procedure—Notice of execution.*] An application for execution was made by a mook-tear, and admitted by the Judge, who ordered a notice to issue to the judgment-debtor. *Held*, that such application cannot afterwards be set aside for irregularity, and that it was sufficient to keep the decree alive. *DHUNPUT SINGH v. LILANUND SINGH* - - - ii Ap. 18

11. — *Application by joint decree-holder for execution of their share of a decree—Notice of execution.*] Two out of several co-decree-holders applied to the judge’s Court to execute their share of a decree. *Held*, that this was not an application upon which the Court would proceed in execution, and that it could not in appeal be changed into an application for an execution of their whole decree. Although a Judge should, when necessary, direct notices to be served on judgment-debtors, he cannot proceed in execution on a mere application to issue such notices over the parties who are bound to apply under s. 212 of Act VIII of 1859. *PURNA CHANDRA MOOKEEJEE v. SARADA CHURN ROY* - - - iii Ap. 21

EXECUTION OF DECREE—continued.

12. — *Deed of compromise—Service of idol.*] Two brothers executed and filed a deed of compromise, dividing between them the family property, and a decree was passed in terms thereof. Under this decree the elder was to hold possession of certain lands, the rents of which were to go to perform the worship of the family idol. The younger, however, kept the elder out of possession of the lands, who therefore, performed the worship at his own charges, and then took out execution for possession and mesne profits, in order to recoup his own expenditure on the family idols. The elder brother having died without executing his decree, his widow applied to execute it for the amount of the mesne profits due under it. *Held*, that the widow was entitled to execute the decree for mesne profits of the idol lands, without showing that the ceremonies had been performed by her husband out of his own private funds. *RADHAJIBUN MUSTAFI v. TARAMONEE DOSSEE* - - - - - ii P. C. 79

13. — *Jurisdiction—Purchase of decree obtained by judgment-debtor—Act VIII of 1859, s. 288.*] A. obtained a decree in the Nuddea Court against B., who had obtained a decree against C. in the Beerbhoom Court. The latter was attached by the Nuddea Court, and sold to A. in execution of his decree. A then petitioned the Beerbhoom Court for execution against C. *Held*, that the Nuddea Court had jurisdiction to attach and sell B.'s decree against C., and A. had a right to apply to the Beerbhoom Court for execution thereof. *RAM-BAKSH CHETLANGI v. BANWARI GOBIND BAHADUR* - - - - - ii A. C. 65

14. — *Striking execution cases off the file—Act VIII of 1859, ss. 110 & 114.*] There is no particular law authorizing the Court to strike cases for execution of decrees off the file. This can only be done under the provisions of ss. 110 and 114 of Act VIII of 1859. The practice of striking off execution cases from the file, in order to clear it and enable Judicial Officers to make their quarterly returns, strongly condemned as productive of the greatest hardship and injustice to the suitors. *GOUB MOHAN BANCOPADHYA v. TARACHAND BANDOPADHYA* - - - - - iii Ap. 17

15. — *Act VIII of 1859, s. 284—Transfer of decree to another Court—Jurisdiction—Limitation.*] When a decree has been transmitted by the Court which passed it to another Court for execution, the latter Court has jurisdiction to try whether or not execution of the decree is barred by the law of limitation. *Per PRACOCK, C. J.*—When there are different laws of limitation in force in the two Courts, the law applicable to the proceedings in execution of the decree should be the law of the Court to which the decree is transmitted for execution. *LEAKE v. DANIEL*, Sup. Vol. 970

16. — The Court to which a decree has been transferred can take cognizance of a question of limitation, but the question must be one arising from facts which are legitimately before the Court in the course of execution,

EXECUTION OF DECREE—continued.

and not a matter of limitation arising antecedent to transfer. IN THE MATTER OF THE PETITION OF SUMAT DAS - - - xiii Ap. 27

17. — The transfer of a decree from one Court to another under s. 284 and the following sections of the Civil Procedure Code, does not give the latter Court a jurisdiction to entertain and determine any question with regard to limitation or otherwise which arose between the parties antecedent to the date of transfer. *LUTFULLAH v. KIRAT CHAND* - - - xiii Ap. 30

18. — *Concurrent orders for execution in different districts—Power of Court.*] A Court has power to send its decree for concurrent execution into several places, although in its discretion it may refuse to exercise such power. *SARODA PRASAD MULLICK v. LUCHMIPUT SING DOOGUR* - - - - - x P. C. 214

19. — *Sale of estate partly within and partly without the jurisdiction—Civil Procedure Code, ss. 249, 284, 285, & 286—Certificate of non-execution.*] A money-decree was made by the Judge of the 24-Pergannas against a mortgagor who was possessed of property in the 24-Pergannas, and also of an estate called Kismut Kosdaha, 18 mauzas of which lay in Zilla 24-Pergannas, and 42 mauzas in Zilla Nuddea. The whole estate was entered in the *taujih* of, and the Government revenue was payable in, the Collectorate of Nuddea. The Judge of the 24-Pergannas, without selling the property of the judgment-debtor which was within his jurisdiction, transmitted a certificate under s. 285 of the Civil Procedure Code to the Judge of Nuddea, stating that no portion of the amount of the decree had been realized by the Court of the 24-Pergannas. Thereupon Kismut Kosdaha was attached and sold by order of the Nuddea Court. In a suit brought against the purchaser for possession of the 18 mauzas lying in the 24-Pergannas by a person who claimed to have bought the right, title, and interest of the judgment-debtor in those mauzas, but who, in fact, was not the real purchaser, — *held*, that although the Court of the 24-Pergannas strictly ought not to have granted the certificate until the property in the 24-Pergannas had been sold, the error in so doing did not make the certificate void, or avoid the proceeding in the Nuddea Court, Kismut Kosdaha being substantially in the Nuddea District. *KALLY PROBONO BOSE v. DINONATH MULLICK* - - - - - xi 56

20. — *Practice—Application for execution.*] An application for execution of a decree need not be accompanied by a copy of the decision of the first Court. *DHUNPUT SINGH v. LILANUND SINGH* - - - - - ii Ap. 18

21. — *Practice in execution by High Court of decree of another Court.*] The functions of the High Court in respect of the execution of decrees of other courts, are limited to effecting execution, and to matters arising out of the proceedings in execution. Where a decree more than a year old had been duly sent to the High Court for execution, an application for a rule

EXECUTION OF DECREE—continued.

to show cause why execution should not issue was refused: such application should be made to the Court which passed the decree. **JADU ROY v. FARRELL** - - - vi Ap. 66

22. — *Procedure in execution of decree of High Court on appeal from mofussil.*] Where the High Court passes a decree on appeal from a Mofussil Court, the Court which has to execute the decree of the High Court is governed by the rules which govern the execution of its own decrees. **KISTO KINKUR GHOSE ROY v. BUBODAKANT SINGH ROY** - - - x P. C. 101

23. — *Jurisdiction.*] A decree of the Court of the Subordinate Judge of Moorshedabad was sent to the Court of the Subordinate Judge of Rajshahye for execution, and certain property was attached in that district. A claimant of the attached property then obtained from the former Court an order on the second Court to send the record back again to Moorshedabad, for the purpose of executing the decree there, on the ground that the judgment-debtor had property in that district; and also on the allegation, unsupported by oath, that the property sought to be attached in Rajshahye was his. *Held*, that the Subordinate Judge of Moorshedabad had acted without jurisdiction, and the record must be sent back to the Court of the Subordinate Judge of Rajshahye for execution. *Held* also, that the claimant had no *locus standi* in the Moorshedabad Court to make such application. **INDRA CHAND DUGAB v. GOPAL CHANDRA SHETIA** - - - iii A. C. 181

24. — *Transfer of decree for execution—Power of Court—Act VIII of 1859, s. 284.*] Where a decree of one Court has been transmitted to another for execution under s. 284 of Act VIII of 1859, the latter Court has jurisdiction to entertain an application to cancel its own order for striking off the case, whatever 'striking off' amounts to. **BAGRAM v. WISE** - - - i F. B. 91

25. — *Attachment of person of debtor—Act VIII of 1859, s. 221.*] In execution of a decree a writ was issued against the defendant who had not any property within the jurisdiction of the High Court. The first writ was made returnable in a month. Another writ, returnable in the same time, was issued, the first not being successful, but the defendants were not found. An application for a writ returnable in one year was refused. *Held* on appeal *per* PEACOCK, C.J., that although the Judge had a discretion to refuse the writ under s. 221, Act VIII of 1859, yet the fact that the plaintiff had not used the utmost possible diligence was not a sufficient ground on which the writ should be refused. *Per* MACPHERSON, J.—The Court had a discretion under s. 221, and ought not to grant the writ where it is not satisfied that the parties have used every reasonable endeavour to execute former ones that have expired; as the former writs were returnable in so short a time, however, in this case the writ ought to be granted. **NITTAI CHANDRA PAL v. THAKUR DAS BISWAS** - - - viii 253 note

EXECUTION OF DECREE—continued.

26. — *Discharge — Further execution against debtor's property.*] After a debtor has been arrested in execution of a decree and discharged at the request of the creditor, his personal property may be taken in execution under the same decree. **JANOKI SINGH ROY v. KALOO MUNDUL** - - - Sup. Vol. 889

27. — *Non-satisfaction of decree against property of judgment-debtor.*] Where a judgment-creditor had obtained a writ of attachment against the property of his judgment-debtor, but the debtor had no property to the knowledge of the creditor against which the attachment could be enforced,—*held* (reversing the decision of the Court below), that he was entitled to an order for execution of the decree by attachment of the person of the debtor. **SETON v. BLJOHN** - - - viii 265

28. — *Decrees under Act X of 1859—Powers of Collector.*] A Collector has power, under Act X of 1859, to sell, in execution of a decree for the payment of money under the Act, not being money due as arrears of rent of a saleable under-tenure, only such moveable property as is capable of being manually seized, and he can issue process against immoveable property only when recourse could not be had to the person or to the moveable property capable of being manually seized. **CHANDRA KANT BHATTACHARJEE v. JADUPATI CHATTERJEE** - - - i A. C. 177

29. — *Power of Collector.*] A. obtained a decree against B. for arrears of rent in respect of a saleable tenure. In execution of the decree, the Deputy Collector of Basseerhaut requested the Collector of the 24-Pergannas to attach and sell any moveable property belonging to B. He, accordingly, caused "certain houses and buildings and some moveable properties" belonging to B. to be attached. On an application by B. to the High Court to set aside the attachment,—*held*, that the Collector had no jurisdiction to attach the property. The decree could not be executed by the attachment of any immoveable property except the tenure, before it was shown that satisfaction of the decree could not be obtained by execution against the person or moveable property of the debtor. **DESARATULLA v. NAWAB NAZIM NAZIR ALI KHAN** - - - i A. C. 216

30. — *Collector, Power of—Act X of 1859.*] A. obtained a decree against B. for arrears of rent. C. was an under-tenant of B. under an ijara lease. In executing A.'s decree against B., the Collector sold the "rights and profits of the debts due for rent" from C. to B., for the years 1273-4-5. A. became the purchaser in a suit brought by D., as assignee of A., of rents alleged to be due for the years 1273-4-5. *Held* that, for the purposes of Act X of 1859, rent is moveable property; and that the Collector, therefore, was competent to sell it in execution of the decree, and to effect the sale to A. **MAHES CHANDRA CHATTAPADHYA v. GURUPRASAD ROY** - - - v 115

EXECUTION OF DECREE—continued.

31. — *Civil Procedure Code, s. 338—Stay of execution—Security.*] A party applying to stay execution of a decree under s. 338 on giving security, is bound to show sufficient grounds to the Court for staying it, whether the decree is in respect of moveable or immoveable property. *IN THE MATTER OF THE PETITION OF ISMAIL KOORE* Sup. Vol. 1007

32. — *Security—Reg. XVI of 1797, s. 4—Appeal to Privy Council.*] In a suit in which an appeal to the Privy Council from a decree of the High Court has been admitted, and is still pending, the Court of original jurisdiction which made the decree first appealed from, has jurisdiction to issue execution. Although, as a general rule, the High Court will take security, under s. 4, Reg. XVI of 1797, before allowing execution of a decree while there is an appeal to the Privy Council pending, yet the Court may, under certain circumstances, allow execution without taking security. Where the lower Court is informed that there has been an appeal to Her Majesty in Council from the decree which it is asked to execute, the lower Court should, in the exercise of its discretion, allow time to the parties to apply to the High Court to stay execution or to require security from the party left in possession, before issuing execution, unless it should see danger of the property being made away with in the interval. *LOCH, J., differed.* *WISE v. RAJAKRISHNA ROY* — Sup. Vol. 541

33. — *Security—Reg. XVI of 1797, s. 4.*] The plaintiff obtained a decree for possession of part of a zemindari in the Court below, and in execution obtained possession on giving security. On appeal by the defendants to the High Court, the decree was reversed and restitution ordered. Plaintiff then appealed to the Privy Council, and applied to the High Court to be left in possession upon his former security. *Held*, that s. 4, Reg. XVI of 1797, did not apply, and the plaintiff was not entitled either to keep possession, or to require the defendants to give security; but the defendants were entitled to restitution of the property without security, whether the judgment of the High Court ordered restitution or not: but that it was within the discretion of the Court to call upon the defendants to give security for costs, if any, awarded by the decree of reversal. *IN THE MATTER OF THE PETITION OF RAJ-KISSEN SINGH* — — — Sup. Vol. 605

34. — *Reg. XVI of 1797, s. 4—Security.*] The plaintiffs, in execution of a decree, which had been affirmed by the High Court on appeal, obtained possession of the land decreed, and realised their costs. The defendant afterwards filed an appeal to the Privy Council against the decree of the High Court. After admission of the appeal he applied that the plaintiffs might be called upon to furnish security. *Held* that, under s. 4, Reg. XVI of 1797, the application could not be entertained. *JOYNARAIN PATTUR v. RUSSICK MOHUN BANERJEE* — — — Sup. Vol. 744

EXECUTION OF DECREE, LAND TAKEN IN EXCESS IN.

See ACT XXIII OF 1861, s. 11.

EXECUTION OF DECREE OF HIGH COURT ON APPEAL FROM THE MOFUSSIL.

See LIMITATION ACT XIV OF 1859, s. 19.

EXECUTION OF DECREE OF PRIVY COUNCIL.

See LIMITATION ACT XIV OF 1859, s. 19.

2. — Powers of Legislature—Limitation.]

The Legislature of this country has no power to pass any law limiting the period during which decrees of Her Majesty in Council may be executed. *ANANDAMAY DASI v. PURNA CHANDRA RAI* — — — Sup. Vol. 506

EXECUTION OF DECREE OF SMALL CAUSE COURT.

See CIVIL PROCEDURE CODE, s. 286.

EXECUTION OF DECREE, STAY OF.

See BENG. ACT VIII OF 1869, s. 52.

EXECUTOR.

See ATTORNEY AND CLIENT.

CERTIFICATE OF ADMINISTRATION.
PROBATE.

MAHOMEDAN LAW, DEBTS.

2. — Power of—Hindu will—Mortgage.]

Per MARKBY, J.—The executors of the will of a Hindu cannot by virtue of their character as executors, mortgage the estate of the testator, in the absence of any power, express or implied, contained in the will. *NILKANT CHATTERJEE v. PEARY MOHUN DAS*, iii O. C. 7

3. — Power of executor of Hindu will.]

The executor of a Hindu will has no power by acknowledgment to revive a debt barred by limitation except as against himself. *GOPALNARAIN MOZOOMDAR v. MUDDOMUTTY GUPTEE*, [xiv 21

4. — *Derivative executor — Succession Act (X of 1865).*] Under the Indian Succession Act the executor of an executor is not derivative executor of the original testator, even though such testator died before 1866. *DESOUZA v. THE SECRETARY OF STATE FOR INDIA* — — — — — xii 423

5. — *Fiduciary relationship — Renunciation of executorship — Administration suit—Suit against purchaser from executor to set aside sale.*] *D.*, a Hindu, died, leaving three sons *S.*, *S. C.* and *R.*, who, on his death, made a partition of his estate, and *S.* covenanted with *S. C.* to discharge all claims made against the estate of *D.* In 1828, *B.*, who claimed a portion of the share taken by *S. C.* on partition with mesne profits, filed a bill in the Supreme Court against *S. C.* and others as representatives of *D.*, and obtained a decree for Rs. 2,00,000. Pending this litigation *S. C.* died, leaving six sons, *J.*, *M.*, *H.*, *P.*, *C.*, and *S. M.*, and a will made before the birth of *S. M.*, by which he left all his property to his sons other than *S. M.* On the death of *S. C.*, *J.*, as one of the executors of his will, compromised *B.*'s suit, so far as it related to the estate of *S. C.*, for Rs. 80,000; and afterwards, in the same capa-

EXECUTOR—continued.

city, sued the representatives of *S.* to recover that amount and the costs in the suit brought by *B.*, and obtained a decree for Rs. 1,70,000. In the meantime, *H.* died, leaving the plaintiffs his sons and heirs, and his brothers *J.* and *M.*, his executors. *J.* renounced the executorship. *M.*, on the 3rd June 1854, as executor of *H.*, executed a deed of assignment, by which he conveyed to *J.* and *S. M.*, for Rs. 5,000, the interest of the plaintiffs in the decree obtained by *J.*, and subsequently at a sale of property belonging to the representatives of *S.* in execution of the decree, *J.* himself became the purchaser. In 1857, in an administration suit, which had been brought by the plaintiffs to compel *M.* to account for the assets received by him from the estate of *H.*, the Master was directed to take an account, which was accordingly done. In a suit brought by the plaintiffs, the sons of *H.*, against *J.*, *M.*, and *S. M.* to set aside the deed of 23rd June, 1854,—*held* that, notwithstanding the renunciation of executorship by *J.*, he stood in a fiduciary relation to the plaintiffs, and the assignment being found to have been made for an inadequate consideration, was ordered to be set aside on the plaintiffs paying the purchaser *J.* the amount of the purchase-money. A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will, by whom the sale had been made, *held* to be no bar to the maintenance of a suit against the purchaser to have the sale set aside. *DHONENDER CHUNDER MOOKERJEE v. MUTTY LALL MOOKERJEE*, [xiv P. C. 276]

EXECUTOR, DECREE AGAINST.

See SUCCESSION ACT, s. 282.

EXECUTOR, PURCHASE FROM.

See VENDOR AND PURCHASER.

EXECUTOR, REMOVAL OF AN INFIDEL EXECUTOR.

See MAHOMEDAN LAW, WILL.

FACTUM VALET, DOCTRINE OF.

See HINDU LAW, FAMILY DWELLING-HOUSE.

FALSE CHARGE, GIVING EVIDENCE IN SUPPORT OF.

See ABETMENT.

FALSE DEED SET UP TO SUPPORT RIGHTFUL CLAIM.

See TITLE.

FALSE EVIDENCE.

See JURISDICTION OF CRIMINAL COURT.

3. — *Alternative charge and conviction.*] The prisoner, who as a witness in a former case had made one statement before the Magistrate and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge or given false evidence before the Magistrate. *Held* (NORMAN and CAMPBELL, JJ., doubting), the conviction was right. *Held* also (CAMPBELL, J., differing), the evi-

FALSE EVIDENCE—continued.

dence taken before the Judge was admissible on the charge of having given false evidence before the Magistrate. *QUEEN v. ZAMIRAN*, [Sup. Vol. 531]

3. — *Contradictory statements—Criminal Procedure Code (Act X of 1872), s. 455, Sch. iii—Penal Code (Act XLV of 1860), s. 193.*] Where a person was convicted of giving false evidence upon an alternative charge in the form given in Sch. iii of the Criminal Procedure Code, *held* by the majority of the Court (JACKSON and PHEAR, JJ., dissenting), that the conviction was good, notwithstanding the jury had not distinctly found which of the two statements charged was false. *Held per* JACKSON, J., that such a charge is bad, and further that an alternative finding upon such charge is invalid. *Held per* PHEAR, J., that although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specially which branch of the alternative is true. *QUEEN v. MAHOMED HOOMAYOON SHAW* - xiii F. B. 324
Contra, *QUEEN v. BIDU NOSHYO*, xiii 325 note

4. — *Alternative statements—Perjury.*] *Per* NORMAN, J.—*Quære*, notwithstanding the decision of the Full Bench in *Queen v. Zamiran*, as to the correctness of conviction for perjury upon alternative statements. *QUEEN v. MATI KHOWA* - - iii A. Cr. 36

5. — *Contradictory statements by witness—Penal Code, s. 193.*] The statement made by a witness before the Magistrate was opposed to the statement made by him before the Sessions Court. On a charge of perjury being made,—*held*, that a statement made by the accused before one Court was no evidence of the falsity of a contrary statement before another Court to support a conviction of giving false evidence. *Held*, that neither the Judge nor jury had any right to assume that an explanation could not have been given consistent with both the statements. *QUEEN v. KOLA* [iv A. Cr. 4]

6. — *Contradictory statements—Criminal Procedure Code (Act XXV of 1861), s. 172.*] Where a witness makes a statement before the Sessions Court which contradicts that made by him before the committing officer, and no evidence is given to show which statement is true, it cannot, under s. 172, Act XXV of 1861, be said that an offence has been committed under the cognizance of the Sessions Court. A Judge's duty in dealing with the contradictory statements of a witness discussed. *QUEEN v. NOMAL* - - - iv A. Cr. 9

7. — *Contradictory statements—Plea of guilty on one charge—Effect of.*] Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. *QUEEN v. HOSSEIN ALI* - - - viii Ap. 28

FALSE EVIDENCE—continued.

8. — *Uncorroborated evidence of single witness—Penal Code (Act XLV of 1860), s. 193.* A person cannot be convicted in the mofussil of giving false evidence upon the uncorroborated evidence of a single witness. *CAMPBELL, J., dissenting. QUEEN v. LALCHAND KOWRAH*, [Sup. Vol. 417]

9. — *Penal Code, ss. 193, 194—Powers of Sessions Judge.* The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. *Held*, that such witness was guilty under s. 193, and not under s. 194, of the Penal Code, as he did not know that he would cause a conviction for murder. *QUEEN v. HARDYAL* — — — III A. Cr. 35

10. — *Form of charge—Penal Code, s. 193.* Six persons were charged in the same charge as follows:—"That you, on or about the — day of June —, at Tajpur, committed the offence of voluntarily giving false evidence in the stage of a judicial proceeding, and that you have thereby committed an offence under s. 193 of the Penal Code." *Held*, the charge was bad and defective: first, as it charged a number of persons jointly with giving false evidence; second, as it did not show what statement the accused persons made; third, as it did not mention the day and year when the offence was committed; fourth, as it did not indicate the Court or officer before whom the false evidence was given. To support a charge of giving false evidence under s. 193, it must be shown that the accused intentionally made a particular statement false to his own knowledge. *QUEEN v. MAHARAJ MISSEER* — — — — — VII A. Cr. 66

11. — *Penal Code, s. 193 — Form of charge.* It is essential, in order to sustain a charge under s. 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was made. A charge under this section should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made. *QUEEN v. FATIK BISWAS* — — — I A. Cr. 18

12. — *Penal Code, ss. 191, 192—Verification of plaint.* A made an application for a new trial under s. 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. *Held* (GLOVER, J., dissenting), that he had not thereby committed an offence under s. 191 or 192 of Penal Code. *IN RE HARAN MANDAL* — — — II A. Cr. 1

FALSE PERSONATION—Registration Act XX of 1866, ss. 93 and 94—Penal Code, s. 419 A vendor proceeded in company with three persons to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's office; one of them there personated the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence. *Held*, on revision, that as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under ss. 93 and 94 of Act XX of 1866, and not under s. 419 of the Penal Code. *QUEEN v. LUTHI BEWA* — — — II A. Cr. 25

FALSE STATEMENT BY DEFENDANT.

See ADMISSION.

FAMILY ARRANGEMENT ON DISPUTE AS TO SUCCESSION IN HINDU FAMILY.

See COMPROMISE.

FAMILY CUSTOM.

See EVIDENCE ACT, s. 32.

FAMILY DWELLING-HOUSE.

See EXECUTION OF DECREE.

HINDU LAW, FAMILY DWELLING-HOUSE.

INJUNCTION.

LIMITATION ACT XIV OF 1859, s. 1, CL. 13.

TRESPASS.

FERRY, SUIT FOR COMPENSATION FOR LOSS BY RESUMPTION OF.

See JURISDICTION OF CIVIL COURT.

FIDUCIARY RELATIONSHIP.

See EXECUTOR

VENDOR AND PURCHASER.

FINANCIAL RESOLUTION, 2004, 14th JULY, 1871.

See COURT FEES ACT.

FINE, DISTRIBUTION OF.

See ACT XIII OF 1867.

FINE FOR AVOIDING SERVICE OF SUMMONS.

See CIVIL PROCEDURE CODE, s. 365. WITNESSES.

FINE FOR CONTINUING OFFENCE.

See CONVICTION.

FINE FOR NEGLECT TO TAKE OUT CERTIFICATE.

See ACT IX OF 1868.

FINE FOR NONATTENDANCE BEFORE COLLECTOR IN PARTITION PROCEEDINGS.

See SALE FOR ARREARS OF REVENUE.

FINE FOR SUFFERING PREMISES TO BE IN A FILTHY STATE.

See BENG. ACT III OF 1864, s. 67.

FINE, REALIZATION OF.

See ACT XXI OF 1856.

FIRE CAUSED BY SPARK FROM ENGINE.

See RAILWAY COMPANY.

FIRE-BALL, POSSESSION OF.

See ATTEMPT TO COMMIT OFFENCE.

FIRM, SUIT BY.

See PLAINT.

'FORDABLE RIVER,' MEANING OF.*See* ACCRETION.**FORECLOSURE, MONEY PAID TO STAY.***See* ATTACHMENT.**FORECLOSURE, NOTICE OF.***See* MORTGAGE.

REG. XVII OF 1806, s. 8.

FORECLOSURE, SUIT FOR.*See* LETTERS PATENT, CL. 12.

MORTGAGE.

FORFEITURE, CONDITION IN LEASE FOR.*See* ACT X OF 1859, s. 78.**FORFEITURE OF PROPERTY.***See* ABSCONDING OFFENDER.

ACT OF STATE.

2. — *Conviction—Attachment in execution—Act XI of 1857, s. 1—Penal Code, s. 121.* In execution of a decree against the defendant, the plaintiff, on 17th July, 1871, attached certain property in Calcutta belonging to the defendant. On 26th July, 1871, the defendant was convicted under s. 1 of Act XI of 1857, and also under s. 121 of the Penal Code, of abetting the waging of war against the Queen, and sentenced to transportation for life and forfeiture of all his property. The offence for which he was convicted was committed in September, 1861. *Held*, that the forfeiture took effect from the date of the commission of the offence, and therefore any attachment subsequently made was invalid. *GANEHLALL v. AMIR KHAN* - - viii 83

3. — *Act XXV of 1857, s. 3.* *B. S.*, the father of the plaintiff, and in possession of immoveable property subject to the Mitakshara law, inherited from his ancestor, was, on the 10th December, 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be confiscated to Government. On the 16th April, 1858, *B. S.* was arrested, and being tried and convicted on a charge of rebellion was sentenced to death. The sentence was carried out on the 21st April, and an order was made on that day for the confiscation of his property. In a suit instituted by the plaintiff to recover the property, — *held*, that *B. S.* had such an interest in it as made it the subject of forfeiture under s. 3, Act XXV of 1857, and the plaintiff, therefore, did not, on the death of *B. S.* become entitled to his estate. *THAKOOR KAPILNATH SAHI v. THE GOVERNMENT* - - - xiii 445

FORFEITURE OF RECOGNIZANCES.*See* CONTEMPT OF COURT.

RECOGNIZANCE TO KEEP PEACE.

FORGERY.*See* APPEAL IN CRIMINAL CASES.

2. — *Penal Code s. 29—False document.* To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published or made in the name of a really existing person. A writing which is not legal evidence of the matter expressed may yet be

FORGERY—continued.

a document within the meaning of s. 29 of the Penal Code, if the parties framing it believed it to be, and intended it to be, evidence of such matter. *QUEEN v. SHIFAAT ALI*, [ii A Cr. 12]

FRACTIONAL SHARE OF ESTATE, ATTACHMENT OF.*See* CIVIL PROCEDURE CODE, s. 246.**FRACTIONAL SHARE OF ESTATE, PURCHASER OF RIGHTS OF HOLDER OF.***See* BENG. ACT VIII OF 1865.**FRAUD.***See* LIMITATION ACT XIV OF 1859, s. 10.

SALE FOR ARREARS OF RENT.

2. — *Proof of fraud.* It is often the case that fraud cannot be established by positive proofs, and on the other hand it is not to be presumed from circumstances of mere suspicion. It is generally shewn by such circumstantial evidence as overcomes the natural presumption of honesty and fair dealing, and satisfies a reasonable mind that such presumption has been displaced. *MATHURA PANDAY v. RAM RUCHA TEWARI* - - - iii A. C. 108

3. — *Finding of—Registration—Priority of registered over unregistered deed.* A Judge should record a distinct finding of fraud or collusion on the part of the holder of a registered deed, with the grounds on which it proceeds, before he gives an unregistered deed priority over it; and unless he do so, the case will be remanded to him for re-trial. *GOVIND KANT ROY v. GIRIDHAR ROY* - - iv A. C. 8

4. — *Deed of gift—Res judicata—Estoppel.* A deed of gift, valid and operative between the parties thereto, cannot be avoided because in another suit between different parties it has been held to be fraudulent as against creditors. *Quare*. — Whether a donor can avoid his own deed on the ground of his own fraud? *RAMANUGRA NARAIN v. MAHA-SUNDUR KUNWA* - - - xii P. C. 433

5. — *Enhancement of rent—Forged deed—Dishonest defence.* In a suit for enhancement of rent, the ryot, defendant, set up a *mokurari patta*, which was found to be forged. *Held*, that the fact of the ryot having relied on a *patta* which was found to be forged did not entitle the landlord to a decree for enhancement of rent to the amount claimed. *ISWAR CHANDRA DAS v. NITTIANAND DAS* - - - Sup. Vol. 490

FRAUD, DECREE FOR SALE SET ASIDE FOR.*See* SALE FOR ARREAR OF RENT.**FRAUD, SUIT TO SET ASIDE SALE ON ACCOUNT OF.***See* JURISDICTION OF CIVIL COURT.**FRAUDULENT REMOVAL OF PROPERTY.***See* PARTNERSHIP PROPERTY.

PENAL CODE, s. 206.

FRAUDULENT REPRESENTATION.*See* CONTRACT.

FREIGHT.*See* CHARTER-PARTY.**FRESH SUIT AFTER DISMISSAL FOR DEFAULT IN APPEARANCE.***See* CIVIL PROCEDURE CODE, s. 110.**FULL BENCH.***See* REFERENCE TO FULL BENCH.**FULL BENCH RULINGS.***See* REVIEW.**GAMBLING ACT.***See* TAZI MANDI CHITTIES.**GAMBLING, SUIT TO RECOVER NOTES LOST BY.***See* TROVER.**GAZETTE, GOVERNMENT.***See* EVIDENCE.**GHATWAL, RIGHT TO APPOINT.***See* DECLARATORY DECREE, SUIT FOR.**GHATWALI TENURE—Services dispensed with.]**

Although in custom the ghatwali tenure descended from father to son, no succession was legal or valid till confirmed by the zemindar and reported by him to the Government authorities. Where Government has dispensed with the services of the Ghatwals, the zemindar is under no obligation to continue to appoint, and may, on a vacancy occurring, settle the tenure as he pleases. *MAHBUB HOSSEIN v. PATASU KUMARI* - 1 A. C. 120

2. — *Arrears of rent—Liability of successor for.* A., the holder of a service tenure subject to a quit-rent to the zemindar, died, leaving his rent for the last three years unpaid. B., his son, succeeded him in the tenure. *Held*, that the zemindar could not sue B. as A.'s successor in the tenure for A.'s arrears of rent. *NILMANI SINGH v. MADHUB SINGH*, [1 A. C. 195]

3. — Acquisition of land—Compensation.]

Where land forming part of a ghatwali tenure in the district of Beerbhoom was taken up for public purposes, *held*, that neither the zemindar nor the under-tenants of the ghatwal could claim a proportionate share in the compensation-money payable for such land. The money so obtained carries with it all the incidents of the original ghatwali tenure, and the ghatwal for the time being is entitled only to the interest accruing therefrom during his lifetime. *RAM CHUNDER SINGH v. JOHER JUMMA KHAN* - - - - - xiv Ap. 7

4. — *Resumption—Compensation.]* In the Kurruckpore ghatwali mehals the profits of the lands, *minus* the quit-rent paid to the zemindar, represented the remuneration given to the ghatwals for police services. Government illegally resumed those lands, dispensing with the services of the ghatwals, and settled the tenures with the ghatwals at half the rent current in that part of the country. The resumption proceedings having been set aside, it remained to determine to whom and in what proportions Government should refund the half jamma taken by it as rent from the

GHATWALI TENURE—continued.

ghatwals during the period of settlement. *Held* that, inasmuch as the ghatwals rendered no service during the period of settlement, the moiety of the jamma retained by them was ample compensation for any loss they might have sustained, and the zemindar was entitled to receive the whole of the moiety taken by Government, partly as quit-rent due to him, and partly as compensation for loss of the ghatwals' services during the continuance of the settlement. *LILANUND SINGH v. THE GOVERNMENT* - - - - - II A. C. 114

5. — *Power of creating incumbrances.]* A ghatwal in the district of Beerbhoom is not competent to grant a lease of the whole or a portion of his ghatwali tenure in perpetuity. Ghatwali tenures in Beerbhoom are grants of land by the Government to individuals for the performance of certain police duties. These tenures are heritable, but the incomes arising from them cannot be charged or encumbered by the ghatwal in possession so as to bind his successor. *GRANT v. BANGSI DEO* - vi 652

6. — *Power of alienation.]* A ghatwal cannot give a patta of his tenure binding a subsequent ghatwal. The rights and interests of each ghatwal in his tenure last only for his life. *JOGESWAR SIKKAR v. NIMAI KARMAKAR*, [1 S. N. vii]

7. — *Hereditary tenure—Services, cessation of—Enhancement of rent—Act XI of 1859, s. 37.]* The plaintiff, an auction-purchaser of a zemindari at a sale for arrears of revenue, sued in 1863 to eject the defendants from certain mauzas included in the zemindari, and which were held by the defendants under a ghatwali tenure, on the ground that the service for which the grant was made was no longer required, and that the sanad, or grant, contained no words of inheritance. The defendants proved that the grant was made in the year 1743 to M., after whose death the land was in the possession of M.'s heir-at-law prior to the Permanent Settlement; and that he and his ancestors had enjoyed uninterrupted possession in direct succession from a period prior to the Permanent Settlement at a quit-rent of Rs. 61 per annum. The Collector appeared on behalf of the Government, and stated that the ghatwali services had not been dispensed with by the Government, but might be required at any time. *Held*, the plaintiff was not entitled to eject the defendants. *Per* PEACOCK, C.J.—The case falls within, and is protected by, s. 37 of Act XI of 1859. *Per* TREVOR and JACKSON, JJ.—S. 37 of Act XI of 1859 does not apply to the case. *Quære*.—Is the zemindar entitled to enhance the rent of a ghatwal in lieu of service? *KOOL-DEEP NARAIN SINGH v. MOHADEO SINGH*, [Sup. Vol. 559]

8. — *Resumption—Hereditary tenure—Purchaser at auction-sale.]* A purchaser at an auction-sale cannot, where lands are held under an hereditary ghatwali tenure originally created before the decennial settlement and at

GHATWALI TENURE—continued.

a fixed rent, resume those lands on the suggestion that the ghatwali services are no longer required. The omission of words of inheritance does not show conclusively that a sanad is not hereditary : it being shown that a ghatwali tenure had descended from father to son for several generations, it was held that it was an hereditary tenure. **KOOLDEEP NARAIN SINGH v. THE GOVERNMENT OF INDIA.**

[xi P. C. 71]

9. — *Resumption—Purchaser at auction-sale, rights of—Reg. XLIV of 1793—Enhancement of rent—Refund of revenue.* Where, prior to the Permanent Settlement, grants of land had been made on ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the performance of the ghatwali services on the part of the zemindar,—*held*, in a suit by the zemindar to resume the lands, that as long as the ghatwals were willing and able to perform the services, the zemindar had no right to put an end to the tenure on the ground that the services were no longer required. A purchaser at a sale for arrears of Government revenue is not entitled, under Reg. XLIV of 1793, to cancel a ghatwali tenure created subsequently to the Permanent Settlement. *Quære*.—Whether he would be entitled to enhance the rent? Where lands granted on ghatwali tenure were, in accordance with a decision of the Special Commissioner, resumed by Government, who made a settlement with the ghatwals, under which the latter continued to pay to the Government half the sum assessed as revenue, reserving the other half to themselves, and the resumption proceedings were subsequently reversed by the Privy Council,—*held*, that the ghatwals were entitled to a refund of the sum paid by them to Government, less the sum which the zemindar ought to have received from them for rent during the time they had paid to Government. **LILANUND SINGH v. THAKUR MUNOBUNJUN SINGH ; THAKUR MUNOBUNJUN SINGH v. LILANUND SINGH** — xiii P. C. 124

10. — *Resumption of service tenure.* In 1775 a rent-free sanad was granted to *M.* for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men, and take care of the ryots. *M.* died and a fresh sanad was, in 1786, granted to *K.* and *R.*, they being thought to be his heirs; but in 1107, *M.*'s true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to *K.* and *R.*, reciting the circumstances; both these sanads were to cultivate, keep up a body of men, keep off elephants, and attend to the safety of the ryots. *Held*, that this was not a service tenure that could be resumed, and the subject of service tenures was explained. **FORBES v. MIR MAHOMED TAKI** — — — — v P. C. 529

GIFT.*See* HINDU LAW, GIFT.

MAHOMEDAN LAW, GIFT.

GIFT INTER VIVOS.*See* HINDU LAW, WILL.**GIFT VOID FOR REMOTENESS.***See* HINDU LAW, WILL.**GOMASTA.***See* ACT X OF 1859, s. 24.

CIVIL PROCEDURE CODE, s. 17.

GOODS SOLD AND DELIVERED—Action for—Principal and agent—Delivery by, and payment to, unauthorized agent. The defendant, through a broker, purchased from the plaintiffs certain goods, to be paid for by cash on delivery, and before removal. Both the defendant and his broker knew that the plaintiffs had a separate cash office where payments for goods of the description purchased were usually made, and the broker knew that the delivery clerk, whose duty it was to deliver the goods, had no authority to do so without a special order from the plaintiffs. A portion of the goods was paid for at the cash office, and delivery thereof obtained from the delivery clerk in the usual way. For the remainder of the goods, the broker, on behalf, but without the knowledge, of the defendant, paid the delivery clerk and obtained delivery from him of the goods without any order for delivery having been given by the plaintiffs. The plaintiffs, a year subsequently, discovered that the delivery clerk had embezzled the money so paid to him.

Held, that they were entitled to recover the balance of the price of the goods from the defendant in an action for goods sold and delivered. **MACKENZIE, LYALL v. SHIB CHUNDER SEAL** — — — — xii 360

GOODS, SEIZURE OF, IN POSSESSION OF PLEDGEE.*See* BAILMENT.

GOVERNMENT OFFICERS, ACTS OF—Binding effect of—(Construction of sanad—Reg. VII of 1822, s. 6, cl. 3.) Where by a sanad a grant was made of certain mauzas, specified as containing an estimated number of bigas, a recognition by the revenue authorities and Civil Courts of the grantee being entitled to forest land as part of that grant, although much exceeding the estimated area, was held to be binding on Government, and not to be an error within the meaning of Reg. VII of 1822, s. 6, cl. 3. **ZAHURBUDDIN v. COLLECTOR OF GORUCKPORE** — — — — iv P. C. 36

2. — *Decree under Act IX of 1859, directing officer to put party in possession.* Where, by a decree of the Special Commissioners' Court, established under Act IX of 1859, a decree was made directing property to be made over to a claimant, the proceedings of officials making over that property were, when followed by a suit against Government to obtain possession of a portion of that property, in which suit the Government raised no question as to the propriety of the decree, or of the making over of the bulk of the property under it, held to bind the Government as to the right of the decree-holder to the property. **SECRETARY OF STATE v. MUSST. KHANZADI** — v P. C. 312

GOVERNMENT PROMISSORY NOTE—Renewal—

Loss of negotiability by Note becoming covered with endorsements—"Allonge." In a suit by a Hindu widow as the holder and last endorsee of a Government promissory note of the 5½ per cent. loan, 1859-60, to enforce renewal of the note, it appeared that, in the advertisement of the loan in the *Gazette*, it was stated that "the practice and rules heretofore in use in regard to the renewal, &c., of promissory notes will be adhered to in respect of the promissory notes of this loan;" that it was the practice of the Government to insist on the production of the promissory note when the interest due on it was applied for, and to endorse the payment of such interest on the back of the note; that the note of which renewal was sought had in consequence become so covered with endorsements that a slip of paper had been attached to it by the Government for the purpose of allowing further endorsements on payment of interest to be made; and that in consequence of having this paper attached, and being covered with endorsements, the note was practically unnegotiable. The defence was that the Government had a discretion as to granting or refusing renewal, and had, on objection made by the reversioners, exercised that discretion in refusing to renew the note. The lower Court dismissed the suit on the ground that the plaintiff had failed to show any legal right to renewal against the Government. *Held* on appeal, that the practice of insisting on endorsement of payments of interest on the note as a preliminary to receipt of interest thereon having rendered it practically unnegotiable, the Government were bound to renew the note. **MONMOHINEE DEBI v. THE SECRETARY OF STATE** - - - xiii 359

GOVERNMENT, RIGHT OF, TO ISLAND IN NAVIGABLE RIVER.

See ACCRETION.

GRANT OF LAND RENT-FREE BY ZEMINDAR—

Reg. XIX of 1793, s. 10—Grant for public purposes—Rent—Revenue. A zemindar in 1830 granted rent-free 22 bigas of land out of his zemindari to A., who was to make a tank, the use of which was to be devoted to the public. In February, 1862, a successor to the grantor in the zemindari sought to resume the land, on the ground that the original 'rent-free' grant was null and void, it having been made without the sanction of Government. *Held per* NORMAN, PUNDIT, and LEVINGE, JJ. (TREVOR and LOCH, JJ., dissenting), such a grant was valid. It was not within the meaning of *Reg. XIX of 1793, s. 10*. 'Rent to the zemindar' and 'Revenue of Government' distinguished. **PIZIRUDDIN v. MADHUSUDAN PAL CHOWDHRY** - - - Sup. Vol. 75

2. — *Reg. XIX of 1793, s. 10—Resumption—Rent—Revenue.* *Held per* PEACOCK, C. J., and L. S. JACKSON and MACPHERSON, JJ. (BAYLEY, NORMAN, and SETON-KARR, JJ., dissenting)—The words "exempt from revenue" in s. 10, *Reg. XIX of 1793*, refer only to grants free from the payment of revenue to Government, and do not in-

GRANT OF LAND RENT-FREE BY ZEMINDAR—continued.

clude grants or leases by a zemindar exempt from the payment of rent. Therefore, a rent-free grant made by a zemindar, and *a fortiori* one by a mautasi ijaradar, of a specific portion of land after a permanent settlement of the estate to which it belongs, is valid as against the grantor and his heirs or against a purchaser of the estate by private sale, and is not liable to be resumed under that section. *Held per* BAYLEY, NORMAN, and SETON-KARR, JJ., *contra*. **MAHOMED AKIL v. ASADUNNISSA BIBI; MUTTYLALL SEN GWYAL v. DESHKAR ROY**, [Sup. Vol. 774

GROUND FOR DECISION.] The reasons for their decisions must, in all cases, be recorded by the Judges of the High Courts in India. **KACHEKALYANA RUNGAPPA KALAKKA TOLA UDIAR v. KACHIVIGAJAYA RUNGAPPA KALAKKA TOLA UDIAR** - - - ii P. C. 72

2. — *Appellate Court.* An Appellate Court is not bound to discuss *seriatim* the arguments adduced by a lower Court in support of its judgment, but need only give its own reasons for its own judgment. **INDRABATI KUNWARI v. MAHADEO CHOWDHRY** - i S. N. ii

3. — An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. **MAHADEO OJHA v. PARMESWAR PANDAY** - - - ii Ap. 20

GUARANTEE—Contract of—Statute of Frauds (29 *Car. II.*), c. 3, s. 4 — 21 *Geo. III.*, c. 70, s. 17.] A contract of guarantee is a "matter of contract and dealing" within the terms of s. 17 of 21 *Geo. III.*, c. 70, and therefore such a contract made by a Hindu is not affected by s. 4 of the Statute of Frauds. **JAGADAMBA DAS v. GLOB** - - - v 639

GUARDIAN.

See ACT XL OF 1858.

LUNATIC.

MAHOMEDAN LAW, GUARDIAN.

2. — *Minor—Relinquishment by guardian.* A. sued B. to recover possession of an hereditary jote, of which he alleged he had been dispossessed by B. during his minority. B. raised the defence of relinquishment by A.'s grandmother and guardian. The Munsif decided against A. on the merits, and his decision was upheld by the Judge. *Held* on special appeal, that to make the relinquishment, if any, valid against A., it ought to have been shown that it was for A.'s benefit. Decision of the lower Court reversed. **KEDARNATH MOOKERJEE v. MATHURANATH DUTT** - - - i A. C. 17

3. — In the same case on review, LOCH J., *held*, that the judgment of the High Court on special appeal must be reversed as being *ultra vires*, for that the question of injury to the minor was not urged in the Court below; no issue was raised on that point, and even if the relinquishment of the jote by the guardian did turn out to the disadvantage of the minor, that was not sufficient ground for setting aside the act of the guardian as invalid, provided

GUARDIAN—continued.

that, at the time it was done, it appeared to be for the interest of the minor and was done in good faith. *GLOVER, J., held*, that the conclusion of the High Court on special appeal was justified, but was willing to remand the case to the Judge below to find the fact whether or not the relinquishment by the guardian was made in good faith for the interests of the minor. *MATTHURANATH DUTT v. KEDARNATH MOOKERJEE* - - - - - ii A. C. 128

4. — *Mother—Power to bind sons*—A mother can bind her sons acting in good faith as their guardian. *MAKBUL ALI v. MASNAD BIRBE* - - - - - iii A. C. 54

5. — *Duty of minor—Compromise, suit to set aside—Proof of fraud.*] It is not incumbent upon a guardian to contest every claim made against the infant's estate. The Judicial Committee, reversing the finding of the Courts below, refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years, the plaintiff having failed to prove that the suit was fictitious, and the compromise fraudulent and collusive. *LEKRAJ ROY v. MAHTABCHUND*. [x P. C. 35]

6. — *Minor—Sale by guardian—Delay of minor on coming of age in repudiating act of guardian—Ratification.*] Mere delay on the part of a ward, after attainment of majority, in repudiating an alienation made by his guardian, cannot be treated as a ratification of the guardian's act, but only as evidence of ratification. *RAJ NARAIN DEB CHOWDHREY v. KASSEE CHUNDER CHOWDHREY* - - - x 324

7. — Long delay in repudiating a contract by a minor on his attaining majority, when such delay is wholly unaccounted for, is sufficient ground for inferring a ratification of the contract. *BOLDONATH DEY v. RAMKISHORE DEY*, [x 326 note]

DOORGACHURN SHAHA v. RAMNARAIN DOSH, [x 327 note]

8. — *De facto and de jure guardian—Transaction beneficial to minor.*] Where a deed of sale was executed by a de facto guardian of certain minors, and the consideration-money was duly applied for the benefit of the property, and the transaction was found to be a necessary one and beneficial to the minors, the mere fact that the manager was not de jure guardian, is not sufficient to invalidate the transaction. *GUNGA PERSHAD v. PHOOL SINGH*, [x 368 note]

GUARDIAN, APPEAL BY, TREATED AS APPEAL BY MINOR.

See APPELLATE COURT.

GUARDIAN OF CHILD OF CHRISTIAN FATHER AND MAHOMEDAN MOTHER.

See CUSTODY OF CHILD.

GUARDIAN, ORDER REJECTING APPLICATION FOR REMOVAL OF.

See APPEAL.

HABEAS CORPUS—Return to writ—Affidavit to controvert return—Amendment of return—Custody of minor—56 Geo. III, c. 100.] The return to the writ of *habeas corpus* must be taken to be true, and cannot be controverted by affidavit. In England, 56 Geo. III. c. 100, s. 4, allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country. The return to a writ of *habeas corpus* can, however, be amended. A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to a writ of *habeas corpus* stated that the girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. *QUEEN v. VAUGHAN*; IN THE MATTER OF GANESH SUNDARI DEBI - v 418

But see *In the matter of Khatija Bibi*, v. 557, where it was held, that the return to a writ of *habeas corpus* is not necessarily conclusive, and does not preclude enquiry into the truth of the matters alleged therein, although 56 Geo. III, c. 100, does not apply to this country. IN THE MATTER OF KHATIJIA BIBI - - - v 557

2. — *Power of High Court to issue writ into the mofussil—Habeas Corpus Act, 31 Car. II, c. 2—Reg. III of 1818—Warrant of arrest of Governor-General in Council.*] On an application to the High Court to issue a writ of *habeas corpus* to the Superintendent (a European British subject) of the Alipore jail, held, that the Supreme Court had power to issue writs of *habeas corpus* to persons in the mofussil, and that the same power is continued to the High Court. As the person against whom the writ was applied for had acted under the written order of the Governor-General in Council, the Court would not direct the writ to issue. IN RE AMEER KHAN - - - - - vi 392

3. — Assuming the power of a Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ, held on appeal, that, it appearing that the prisoner was in custody under a warrant in the form prescribed by Reg. III of 1818, the detention was legal. The detention to be legal need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. IN RE AMEER KHAN - - - - - vi 459

4. — *Mahomedan law—Husband and wife—Custody of wife.*] On an application for a writ of *habeas corpus* to bring before the Court M., a female infant, who was alleged to be in the unlawful custody of S., a Mahomedan, it was stated that M.'s father was a Jew by birth who had embraced the Mahomedan faith many years ago, but had since returned to the Jewish persuasion; that her mother was a Mahomedan woman; that she was detained by S. on the allegation that

HABEAS CORPUS—continued.

she was married to him, but that the alleged marriage was invalid by reason of the want of consent of her father; and that she was of the age of about nine years, and had not attained puberty; and a writ was thereupon granted. The return stated that *M.* being then about ten years of age, was married with the consent of her mother to *S.*; that after the marriage *M.* and her mother had lived with *S.* until her mother, at the instigation of the father, had left the house of *S.* taking *M.* with her; that *S.* had thereupon instituted a charge against the father and mother for enticing away and detaining *M.*, on which the Police Magistrate considered the marriage proved, and ordered her to be delivered into the custody of *S.* The High Court refused to consider the custody illegal, and ordered the writ to be quashed. *In re Khatija Bibi distinguished.* IN THE MATTER OF MAHIN BIBI - - - xiii 160

HANDWRITING.

See EVIDENCE.

HAUTS.

See NUISANCE.

HEIR, RIGHT OF EXPECTANT, ON DEATH OF WIDOW.

See ATTACHMENT.

HEREDITARY TENURE.

See GHATWALI TENURE.

POTTA, CONSTRUCTION OF.
UNSETTLED POLLIAM.

HIDDEN TREASURE.

See REG. V OF 1817.

HIGH AND LOW WATER MARK, TITLE TO LANDS BETWEEN.

See SPECIFIC PERFORMANCE.

HIGH COURT, N. W. P., ESTABLISHMENT OF.

See REFERENCE FROM SUDDER COURT AT AGRA.

HIGH COURT, POWER OF.

See ENGLISH COMMITTEE.

REVISION.

SENTENCE.

TRANSFER OF CASE TO SPECIALLY APPOINTED OFFICER FOR TRIAL.

HIGH COURT, PROCEDURE OF.

See ACT XIV OF 1870.

HIGH COURTS' CRIMINAL PROCEDURE ACT (X OF 1875), s. 147—Transfer of case to High Court—Costs—Police Magistrates—Notes of evidence.] In a case transferred to the High Court under s. 147, Act X of 1875, the Court has no power to give costs. *Semble.*—The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the Judicial Officers of all Criminal Courts subject to the Act. IN THE MATTER OF LOUIS, AND IN THE MATTER OF BENG. ACT VI OF 1866.

[xv Ap. 14]

HINDU LAW, ADOPTION.

See ONUS PROBANDI.

2. — *Authority to adopt—Kinsmen, consent of—Prohibition to adopt.]* According to the

HINDU LAW, ADOPTION—continued.

Hindu law current in the Dravida country, a widow not having her husband's permission may, if duly authorized by his kindred, adopt a son to him. The question, Who are the kinsmen whose assent will supply the want of positive authority of the deceased husband?—must depend upon the circumstances of the family in each case. There must be such evidence of the assent of the kinsmen as suffices to show that the act is done by the widow in the *bona fide* performance of a religious duty, and not capriciously, or from a corrupt motive. The widow cannot adopt where there is a prohibition by the husband, direct or implied. COLLECTOR OF MADURA v. MUTU RAMALINGA SATHUPATHY - i P. C. 1

3. — *Authority to adopt—Proof of.]* In an adoption made by a Hindu widow, under authority conferred upon her for that purpose by her husband, the authority must be strictly proved, and as the adoption is for the husband's benefit, the child must be adopted to him, and not to the widow alone. An adoption by the widow alone would not, for purposes of Hindu law, give the adopted child, even after her death, any right to property inherited by her from her husband. *Held* in the present case, that the evidence did not support the contention that the adopted son of the widow had been adopted to the husband. CHOWDHRY PADAM SINGH v. KOER UDAYA SINGH - ii P. C. 101

4. — *Permission to adopt.] Held,* that the doctrine of Hindu law that a "permission is to be presumed in the absence of prohibition" (*Dattaka Chandrika*, sec. 1, verse 32) relates to a giver, and not to a receiver in adoption. TARINI CHURN CHOWDHRY v. SABODA SUNDARI DAS - iii A. C. 145

5. — *Widow with authority to adopt, position of—Limitation.]* A Hindu died after leaving directions with his widow to adopt a son. On a partition of the joint property among his brothers and widow, a certain property was allotted to the widow as her share; afterwards in 1849, the brother dispossessed her. In 1851 she adopted a son, who attained his majority in 1865, and in 1866 sued for possession of the property. *Held,* that the possession of the widow previous to the adoption was not that of a trustee for the son to be adopted so as to prevent limitation. GOBIND CHANDRA SARMA MAZOOMDAR v. ANAND MOHAN SARMA MAZOOMDAR - - - ii A. C. 313

6. — *Only son.]* The adoption of an only son is invalid according to Hindu law. UPENDRO LAL ROY v. RANI PRASANNA MAYI, [i A. C. 231]

7. — *Construction of deed of gift—Adoption of eldest or only son.]* A Hindu died after having made a *hibbanama*, or deed of gift, giving the bulk of his property to the eldest son of one of his brothers, designating him as his *pallok-putra*. The donee thereof died without issue, but leaving a widow him surviving. On the death of his widow his cousins sued his step-brother for possession of

HINDU LAW, ADOPTION—continued.

their share of his property, on the allegation that he had been adopted by their uncle, and consequently the relationship between him and his step-brother had been severed, and that they were equally entitled with the step-brother to succeed. The defendant denied the fact of the adoption. The High Court held, that the intention to adopt and the fact of adoption were proved by the terms of the deed of gift. *Held*, by the Privy Council, reversing the judgment of the High Court, that the words of the hibbanama ["but as I had no son or daughter, I took you as my pallok-putra, in the month of Aghran, 1211, B. S. (1803), with the anumati (permission) of your parents, for the purpose of securing future oblations of water and funeral cake, and having brought you up like a son, performed the ceremonies of your sangakar, &c., and have constituted you my representative"] were not those which properly import the adoption of a son by gift—Dattak Putra. *Held*, that the presumption which arose from the religious duty of a childless Hindu to adopt was, in this case, opposed to as strong a presumption that a Hindu would not break the law by giving in adoption an eldest or only son. **NILMADHUB DAS v. BISWAMBHAR DAS** - - - - - iii P. C. 25

8. — *Adoption — Second adoption.*] A second adoption cannot take place in the lifetime of the first adopted son. **GOPEE LALL v. SREE CHANDRAOLEE BUHOOWEE** - xi P. C. 391

9. — *Adoption after payment of price—Contract to give son in consideration of an annual allowance—Contract Act (IX of 1872), s. 23.*] An adoption of a son after payment of price is not recognized in the present, the *Kali, Yuga*. The only adoption now recognized is that of the *dattaka* son, or son given. A contract to give a son in adoption in consideration of an annual allowance to the natural parents, is void under s. 23 of Act IX of 1872, inasmuch as the contract, if carried out, would involve an injury to the person and property of the adopted son, and would defeat the provisions of the Hindu law. **ESHAN KISHOR ACHARJEE CHOWDHEE v. HARIS CHANDRA CHOWDHEE** - - - - - xiii Ap. 43

10. — *Adoption of stranger where there is a brother's son.*] By the Hindu law, the adoption of a stranger is valid, notwithstanding the existence of a brother's son at the time of the adoption. **GOOOLANUND DOSS v. WOOMA DASER** - - - - - xv 405

11. — *Ceremonies necessary for.*] In a suit for confirmation of a right to adopt a son and to cancel deeds of agreement to give and receive the defendant's son in adoption, *held*, that to complete an adoption there must be an actual giving and receiving, and that the execution of the deeds was not sufficient. **SRINARAIN MITTER v. KISHEN SOONDERY DASI** - - - - - ii A. C. 279

12. — *Ceremonies for adoption—Sudras.*] *Quere.*—Whether religious ceremonies are

HINDU LAW, ADOPTION—continued.

necessary to make an adoption valid among Sudras? **SRINARAIN MITTER v. KISHEN SOONDERY DASI** - - - - - xi P. C. 171

13. — *Adoption—Ceremonies—Evidence.*] In a case to set aside an adoption, on the ground that the ceremonies had not been performed, where there was satisfactory evidence showing that the adoption had been continuously recognised for a series of years, and that the party adopted had been in possession, either in person or through his guardian, of the property in dispute, *held*, that the Court may well dispense with formal proof of the performance of the ceremonies, unless it were distinctly proved, on the part of the plaintiff, that the ceremonies had not been performed. **SABO BEWA v. NAHAGUN MAITI** - ii Ap. 51

14. — *Sudra ceremonies—Validity of adoption.*] Mere giving and receiving are not sufficient to render valid an adoption of a Sudra boy. Ceremonies similar to those enjoined in the shastras for the adoption by a Brahmin are requisite in the case of a Sudra. **BHAIRABNATH SYE v. MAHES CHANDRA BHADURY** - - - - - iv A. C. 163

15. — *Sudra adoption—Ceremonies.*] A Hindu Sudra adopted the plaintiff, his brother's son, in 1247 (1840), who, upon the death of his adoptive father, performed his *sradh*, and obtained possession of all his property as such adopted son. The adoption had not been questioned except in 1256 (1849), when the defendant sued the plaintiff, who was then still a minor, through his guardian, and obtained possession from the plaintiff of certain of the property of the deceased, on the ground that the adoption was invalid. The plaintiff now, within twelve years of such dispossession, sued to recover possession, stating that the decree in the former suit had been obtained by the defendant in collusion with the guardian. The defence was, that the adoption was invalid, the proper ceremonies not having been performed. The Court refused to entertain such defence. *Per* BAYLEY, J. — Ceremonies which are necessary to be observed for a valid adoption among Hindus of the superior classes are not necessary in the case of an adoption by a Sudra. In the case of adoption by a Sudra of a brother's son, mere giving and taking may be sufficient to make the adoption valid. **NITTANUND GHOSE v. KRISHNA DOYAL GHOSE**, [vii 1

16. — *Adoption—Sudra adoption—Ceremonies.*] Among Sudras in Bengal, no ceremonies in addition to the giving and taking of the child are necessary to constitute a valid adoption. **BEHARI LAL MULLICK v. INDRAMANI CHOWDHURANI** - - - - - xiii F. B. 401

17. — *Widow—Unchastity.*] A Hindu widow, who has become unchaste, is living in concubinage, and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption. **SAYAMALAL DUTT v. SAUDAMINI DASI** - - - - - v 362

HINDU LAW, ADOPTION—continued.

18. — *Evidence—Nattore raj.*] In a suit as to the validity of the adoption of a claimant to the Nattore raj, *held*, notwithstanding a finding of the Judge of first instance that the adoption was not proved, that the evidence fully supported the adoption. *CHUNDERNATH ROY v. KOOR GOBIND NATH ROY, and COLLECTOR OF MOORSHEDABAD v. RANEE SHIBESUREE DABEE* - - - - xi P. C. 86

HINDU LAW, ALIENATION.*See CHAMPERTY.***DECLARATORY DECREE, SUIT FOR. HINDU LAW, ENDOWMENT.**

LIMITATION ACT XIV OF 1859,
S. 1, CL. 16.

2. — *Alienation—Restraint on alienation.*] A restraint on alienation put by a testator on his descendants was considered void as being unknown to and inconsistent with Hindu law. *NITAI CHARAN PYNE v. GANGA DAS* - - - - iv O. C. 265 note

3. — *Ancestral property—Mitakshara—Legal necessity.*] To justify an alienation of ancestral property, a legal necessity for the sale must be strictly proved to have existed, and such necessity cannot be inferred from the habits and general character of a vendor. *MITTRAJIT SINGH v. RAGHUBUNSI SINGH*,
[viii Ap. 5]

4. — *Alienation by father—Mithila law.*] Under the Mithila law, the father of a Hindu family cannot give a mokurari lease of land at a nominal rent as a reward for faithful service, when his children, being infants, do not consent to such grant. *PRATANARAYAN DAS v. COURT OF WARDS*,
[iii A. C. 21]

5. — *Mithila law—Separate acquisition.*] According to Mithila law, the owner of self-acquired property has full power of disposition over it. *BISHEN PERKASH NARAIN SINGH v. BAWA MISSEER* - - - - xii P. C. 430

6. — *Mithila law—Son's interest in ancestral estate.*] Ancestral property which descends to a father under the Mithila law is not exempted from liability to pay his debts because a son is born to him. Such exemption can only be pleaded when the nature of the debts incurred by the father is such as would free the son from the usual obligation of discharging his father's debts out of the ancestral estate. A decree, properly obtained against the father can be executed by sale of such ancestral estate, and the interests of the sons as well as of the fathers will be bound by it. A purchaser at such sale is not bound to inquire into the circumstances under which the decree was made. *GIRDHAREE LALL v. KANTOO LALL; MUDDUN THAKOOR v. KANTOO LALL*,
[xiv P. C. 187]

7. — *Mitakshara law—Legal necessity—Ancestral property—Refund of purchase-money.*] A., a Hindu subject to the Mitakshara law, sold his right and interest in the undivided ancestral estate of his family without the consent

HINDU LAW, ALIENATION—continued.

of his co-sharers, and not for the benefit of the estate, but in order to pay off a personal debt. The sale was by auction to an innocent purchaser for value. *Held* that, in a suit brought within twelve years from the date on which the purchaser obtained possession, the sons and grandsons of A., deceased, were entitled to recover possession without making any refund of the purchase-money. *NATHU LAL CHOWDREY v. CHADI SAHI* - iv A. C. 15

8. — *Suit by son to set aside alienations made by the father—Limitation Act XIV of 1859, s. 1, cl. 12.*] L.'s father, a Hindu living under the Mitakshara law, alienated in 1848 ancestral immoveable property by deed of absolute sale, and possession was taken by the alienee at the time. In 1863, L., who was born in 1837, sued on his own account and as guardian of his minor brother R., who was born in 1856, to set aside the sale. The father died in 1857. *Held*, L.'s cause of action accrued when possession was taken under the deed of sale, and not at the father's death. R.'s birth did not create a new right of action in L. either alone or jointly with R. The suit, therefore, was barred by lapse of time. Where the alienation was by deed of conditional sale, followed by decrees for foreclosure and possession, to which L. and R. were not parties, *held*, the cause of action accrued when possession was taken under the decree. *RAJA RAM TEWARI v. LUCHMUN PRASAD*,
[Sup. Vol. 731]

9. — *Suit for declaration of future right to a share in joint property.*] A member of an undivided Hindu family living under the Mitakshara law, in his father's lifetime brought a suit for declaration of his future right to a one-sixth share in a portion of the immoveable property of the family, and to set aside an alienation of it by his father, as having been made without legal necessity. *Held*, that no such suit was maintainable. *RAOL GORAIN v. TEZA GORAIN* - - - - iv Ap. 90

10. — *Ancestral property—Cause of action.*] According to the Mitakshara law a son has a right, during the lifetime of his father, to set aside alienations of ancestral property made without his consent. His cause of action arises from the date when possession is taken by the purchaser. *AGHORI RAMASARAG SINGH v. COCHRANE* - - - v Ap. 14

11. — *Ancestral and self-acquired property.*] A., a Hindu, sued B., the widow of C., claiming to be entitled with others as heirs of C. under the Mitakshara law to certain property. The suit was compromised on the terms as to one portion of the property, that it was to be retained by B. for life, and after her death to be divided according to specified shares between A. and the other claimants. After B.'s death A. obtained possession of his share under the deed of compromise. A. alienated the property, and during his lifetime his sons sued to set aside the alienation on the ground that it was ancestral property. *Held*,

HINDU LAW, ALIENATION—continued.

A. took the property absolutely, and not as ancestral property. **MAHABIR KOWER v. JUBHA SINGH** — — — — — viii 38

12. — *Property inherited by son collateral-ly.* In execution of a decree against A., a Hindu living under the Mitakshara law, his right, title, and interest in a certain property, part of which he had acquired as heir to his nephew and cousin, was sold. A suit brought by A.'s sons to obtain possession of their share of the property, on the ground that the debt for which the sale was held had not been incurred under a legal necessity, was dismissed so far as it related to the part of the property which A. had inherited collaterally. According to the Mitakshara, a son cannot prevent alienation by his father of property which the latter has inherited collaterally. The restriction upon the father's power of alienation only applies to the grandfather's property. **NUND COOMAR LALL v. RAZEEODDEEN HOSSEIN** — — — — — x 183

13. — *Consent of son.* Where, in a part of the country the general law of which is the Mitakshara, a custom exists with regard to ancestral immovable property, that it is not partible among the members of the joint family, but descends from the father to his eldest son, the father cannot alienate such property without the concurrence of his son, unless such alienation is justified by family necessity. **RAM NARAIN SINGH v. PERTUM SINGH**, xi 397

14. — *Suit to set aside alienation—Bond fide purchaser from vendee of father—Refund of purchase-money.* In a suit by some members of a joint family under Mitakshara law to set aside an alienation of some of the joint family property effected by their father, it appeared that ten years had elapsed since the alienation; and that about six years before the suit was brought, the purchaser from the father sold again to the principal defendants for valuable consideration, and there was no suggestion that these defendants did not purchase *bond fide*, the plaintiffs apparently acquiescing in the sale, and not interrupting during that time the enjoyment of the property by the father's vendee. The Court refused to set aside the alienation. The alienation would not have been set aside at any rate without a refund of the purchase-money to the defendants. **SURUB NARAIN CHOWDHRY v. SHEW GOBIND PANDEY** — — — — — xi Ap. 28

15. — *Ancestral property.* A., the *karta* of a Hindu family governed by the Mitakshara law, living with his two sons B. and C. in joint enjoyment of the family property, took a loan from certain persons, and executed to them a mortgage bond on the joint family property. The bond-holders obtained a decree on their bond, in execution of which they caused the property to be sold, and themselves became the purchasers. C. was a minor at the time of the alienation. In a suit by B. on behalf of himself and C. to set aside the alienation, on the ground that it had been made without their consent and without legal

HINDU LAW, ALIENATION—continued.

necessity, the Court found that B. had taken such a part in the transactions leading to the alienation as made him a consenting party to it; that there was no legal necessity for the alienation; and that C. being a minor, the alienation was not the joint act of all the members of the family. *Held* that, under these circumstances, the alienation failed to convey to the purchasers either the entirety of the property or any share or interest in it, and C. was entitled to have it set aside. In ordering the alienation to be set aside, the Court, in the interest of the minor son, and favouring the equity the purchasers clearly had against A. and B., directed that, on recovery of the property, it should be held and enjoyed in defined shares, and that the shares of A. and B. should be jointly and severally subject to the lien thereon of the purchasers for the repayment of the loan to A. So long as a Hindu family under the Mitakshara law is living in the joint enjoyment of the family property, without having come to an actual partition among themselves of that property, or an ascertainment and partition of their rights in it, no member of the family has any separate proprietary right therein which he can alienate or encumber. The property can only be alienated by the joint act of all the members, express or implied; or, in case of justifiable family necessity, by the *karta* alone. **MAHABEER PERSAD v. RAMYAD SINGH**, [xii 90]

16. — *Ancestral property.* T. S., a Hindu, who with his son J. N. formed a joint Hindu family subject to the Mitakshara law, executed in favour of D. a bond, whereby he professed to pledge a share of certain family property as security for the repayment of money advanced to him by D. Default being made in payment of the loan when due, D. brought a suit on the bond against T. S., and obtained a decree for the amount secured thereby, in execution of which decree he attached and caused to be sold the right, title, and interest of T. S. in certain other family property not covered by the bond, and himself became the purchaser thereof, and took exclusive possession of the property. In a suit brought by J. N. against T. S. and D. to recover possession of the property purchased by D., on the ground that no legal necessity existed for the loan,—*held*, that T. S. had no individual right to any portion of the property which he could pass to a third person, and therefore J. N. was entitled to have the alienation set aside, and to recover possession of the property. There being nothing amounting to any voluntary representation by T. S. of his having any right or interest in the property, or any representation of fact made by T. S. in order to induce D. to advance the money, and nothing to show that there was no other property out of which the decree could be satisfied, no equity arose between T. S. and D. such as entitled the latter to call on T. S. to divide the property with his son, so as to make the share of T. S. available by D. to the extent

HINDU LAW, ALIENATION—continued.

of the loan. **JUGDEEP NARAIN SINGH v. DEENDIAL** - - - - - xii 100

17. — *Mitakshara — Ancestral property—Refund of purchase-money.*] Under the Mitakshara law when a sale of ancestral property by the father has been set aside in a suit by the son, on the ground that there was no such necessity as would legalize the sale, and that the son had not acquiesced in the alienation, the son is entitled to recover the property without refunding the purchase-money, unless such circumstances are proved by the purchaser as would give him an equitable right to compel a refund. **MODHOO DYAL SINGH v. KOLBUR SINGH** - - - - - Sup. Vol. 1018

18. — *Son's interest in the ancestral estate.*] The interest which a son by birth acquires in the ancestral estate of his father under the Mitakshara law, does not entitle him to claim exemption from all debts contracted by the father subsequent to his birth. Such exemption can only be claimed when the debts are of an illegal nature, or have been contracted for immoral purposes. An alienation made by the father by way of mortgage or sale for the discharge of a debt for which the property would be ultimately liable, falls within the meaning of the unavoidable transactions spoken of in paras. 28 and 29, s. 1, Ch. i of the Mitakshara. **MUDDUN GOPAL LALL v. MUSST. GOWRUNBUTTY**; **GRIDHARI LALL SAHOO v. MUSST. GOWRUNBUTTY**; **POOSUN LALL SAHOO v. MUSST. GOWRUNBUTTY** - - - - - xv 264

19. — *Alienation by daughter—Legal necessity—Mortgage.*] The daughter of a Hindu, while in possession of the paternal estate, borrowed a large sum of money under a mortgage of a portion of the estate. Part only of the money borrowed was devoted by her to the relief of legal necessity. After her death, the next heir sued the mortgagee to recover the property mortgaged, and to set aside the mortgage deed. The Courts below gave a decree for possession to the plaintiff upon repayment of the amount actually spent in the relief of legal necessity. Such decree upheld on appeal. **LALIT PANDAY v. SRIDHAR DEO NARAYAN**, [v 176

20. — *Alienation by widow—Suit for rent—Title—Possession by widow.*] In a suit for rent by a patnidar, who claimed under a lease granted to him by a Hindu widow whose husband had died leaving a will, which gave the widow no power to alienate the property, *held*, the suit was properly dismissed, and that there was no necessity for the Judge to enter into any question of possession by the widow. **BANEE MADHAB GHOSE v. THAKOOR DOSS MUNDUL** - - - - - Sup. Vol. 588

21. — *Ancestral debt—Necessity.*] A. died leaving B., a grandson by a son deceased, C., the widow of another son deceased, and D. and E., sons, him surviving. All four held separate possession of their respective shares in the estate. C. sold her share for Rs. 995 to pay off a debt of A.'s of Rs. 670.

HINDU LAW, ALIENATION—continued.

D. and E. having waived their rights, B. sued as reversioner to set aside the sale made by C. *Held*, that C. did no wrong in selling her share to pay off the debt, and the mere fact that she sold it for more than the amount of the debt did not render the sale invalid. **LALA CHATRAPATY v. UBA KUNWARI** i A. C. 201

22. — *Necessity—Evidence—Recital in deed of sale.*] A recital in a deed of sale by a Hindu widow of her deceased husband's property, setting forth that the alienation was necessary for the purpose of paying his debts, is not of itself evidence of such necessity; nor does the attestation of a relative import his concurrence. Such a transaction may become valid by the consent of the husband's kindred, but the kindred in such case must generally be understood to be all those who are likely to be interested in disputing the transaction. At all events there ought to be such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one, and justified by Hindu law. **RAJLAKSHI DEBI v. GOKUL CHANDRA CHOWDHRY** - - - - - iii P. C. 57

23. — *Sale or mortgage—Necessity.*] There is no rule of Hindu law which compels a widow alienating a portion of her late husband's property to have recourse to a mortgage instead of to a sale to raise funds for her maintenance. The question whether she has exceeded her powers or not depends upon the necessities of the case. **NABAKUMAR HALDAR v. BHABASUNDARI DEBI**, iii A. C. 375

24. — *Moveable and immoveable property—Reversioners.*] A Hindu widow has power, with the consent of the reversionary heirs, to make a valid alienation, for religious purposes, of property, moveable or immoveable, left by her husband. Where a Hindu widow dedicated property by deed to the worship of an idol, and the property was given to trustees in trust, after the death of the widow, to permit the male heirs of her late husband to receive the rents, *held*, that such heirs were entitled to actual possession and to the rents of the estate, provided they devoted it according to the provisions of the deed in the worship of the idol. **BRAJANATH BYSAKH v. MATILAL BYSAKH**, iii O. C. 92

25. — *Suit by reversioners to set aside alienation—Waste—Necessity.*] A Hindu died in 1808, leaving five sons, and possessed of considerable property. In 1813 the four younger sons obtained a decree for partition against their elder brother, but themselves continued to live together as a joint Hindu family, and so did their widows after their death. After the death of the widow of one of the brothers, J. D., the widow of another brother, brought a suit for partition; but subsequently, by the consent of all parties, the matters in dispute were referred to arbitration, and an award was made as follows: "Selling their (the widows') respective ryoti land, bati, or house, they will pay the costs of their respective vakeels; in that way the land, bati, or house that shall

HINDU LAW, ALIENATION—continued.

28. — *Legal necessity—Suit by reversioner—Cause of action.*] A., a Hindu widow, obtained a loan of a sum of money by mortgage of a certain parcel of property belonging to her husband. The mortgagee obtained a decree, and in execution thereof caused the property to be sold. In a suit by A.'s daughter's son, the next reversionary heir, for a declaration that the sale was invalid as against him, the lower Appellate Court held that there was no cause of action. *Held* in special appeal, that the existence of a cause of action depended upon whether the widow incurred the debt under legal necessity; and the case was remanded for trial of that question. *BISTOBHARI SAHOY v. LALA BAIJNATH PRASAD* - - vii 218

29. — *Suit by reversioner to set aside deeds*] A Hindu widow executed deeds of gift, in which her late husband's mother, the nearest reversioner, concurred. After the death of the widow, but in the lifetime of the mother, the next presumable reversioner sued to set aside the deeds and for possession. *Held*, that the suit was good so far as it sought to set aside the deeds; and the mother having died before decree, that no objection could be taken to the suit on the ground that the decree gave possession to the plaintiff. *KOORER GOLAB SINGH v. RAO KURUN SINGH; RAO KURUN SINGH v. MAHOMED FYZE ALI KHAN* - - x P. C. 1

30. — *Waste—Reversioners—Manager.*] Waste on the part of a Hindu widow in possession being proved, it is not competent to the Court to put the reversioner in possession, assigning maintenance to the widow. A manager should be appointed to the estate accountable to the Court. The reversioner may be appointed such manager. *MOHARANI v. NUNDOLALL MISSEER* - - - - - i A. C. 27

31. — A Hindu widow held her husband's property till within twelve years of the date of suit. At that time one of the defendants claimed the property as belonging to his own separate talook; and she thereupon gave it up, and ever since refused to enter on it. In a suit by the reversionary heir of the husband to have the title declared, and to obtain possession of the property, — *held*, that the possession of the defendant was adverse to the widow and reversioners; that the reversionary heirs, therefore, had a right to sue for a declaration of their title at any time within twelve years from the date of the adverse possession; that as the widow refused to have anything to do with the property, and the reversioners had no right to possession till after the death of the widow, the proper course for the Court to adopt was to appoint a manager to collect the assets of the estate, who should account for them to the Court; and the Court should hold them for the benefit of the reversionary heir. *RADHA MOHAN DHAR v. RAM DAS DEY*, [iii A. C. 362]

32. — *Reversionary heirs.*] A conveyance by a Hindu widow, for other than allowable causes, of property which has descended to her from her husband, is not an act of waste

HINDU LAW, ALIENATION—continued.

which destroys the widow's estate and vests the property in the reversionary heirs, and the conveyance is binding during the widow's life. The reversionary heirs will not be precluded, even during the lifetime of the widow, from commencing a suit to declare that the conveyance was, executed for causes not allowable, and is, therefore, not binding beyond the widow's life; nor will the reversionary heirs be deprived, during the widow's life, of their remedy against the grantee to prevent waste or destruction of the property, whether moveable or immovable. *GOBINDMANI DAS v. SHAMLAL BYSAK; KALIKUMAR CHOWDHRY v. RAMDAS SHAHA; GAUBHARI GUI v. PEARI DAS; MACHOORAM SEN v. GAUBHARI GUI*, [Sup. Vol. 48]

33. — *Necessity—Performance of husband's *sraddh* at Gya.*] The performance by a widow of her husband's *sraddh* at Gya is a reasonable necessity for which she may alienate at least a portion of his estate. *MAHOMED USHREUF v. BROJESSUREE DOSSEE* - - xi 118

34. — Expenses incurred by a Hindu widow for a pilgrimage to Gya and for the performance of *sraddh* are legitimate expenses for which she can alienate her husband's property. Where the amount expended was Rs. 1,700, and the property was sold for Rs. 4,000, — *held*, in a suit by the heir against the purchaser to have the sale set aside, that the plaintiff not having offered to repay Rs. 1,700 and interest, his suit must be dismissed. *MUTTERAM KOWAR v. GOPAUL SAHOO* - - xi 416
Also *CHOWDHRY JUNMEJOY MULLICK v. RUSSOMOYE DASSEE* - - xi 418 note

35. — *Income—Accumulations—Purchase of property out of income for maintenance of family—Reversioners.*] A Hindu widow cannot alienate moveable or immovable properties acquired by her out of the funds derived from the income of her husband's estate. Such properties descend to the heirs of the husband and not of the widow. Where, however, a widow held under a deed which conveyed the property to her to enjoy for her lifetime, and to incur all needful expenses, *held*, she was entitled to invest sums out of the income for the benefit of her daughter and grand-daughter in the purchase of immovable property for their maintenance. *CHOWDEY BHOLANATH THAKOOR v. MUSST. BHAGABATTI DEBI; BHAGABATI DEBI v. CHOWDEY BHOLANATH THAKOOR* - - - - - vii 93

36. — *Income—Accumulations.*] A Hindu widow can alienate the income of the husband's property, it forming no part of his estate; but income and accumulations are not the same thing; therefore, *Quære* whether she can so deal with accumulations. In *THE GOODS OF HARENDRANARAYAN; KAILASNATH GHOSE v. BISWANATH BISWAS* iv O. C. 41

HINDU LAW, CONTRACT.

See VENDOR AND PURCHASER.

2. — *Contract—Promissory note—Consideration.*] In a suit under the Bills of Exchange

HINDU LAW, CONTRACT—continued.

Act to recover Rs. 1,200 on a promissory note, held by PEACOCK, C. J., that the suit being between two Hindus must be decided by Hindu law. By Hindu law a promissory note does not import consideration, and, therefore, where it was proved that the defendant actually received only Rs. 700, that sum was all the plaintiff was allowed to recover. RAMLAL MOOKERJEE v. HARAN CHANDRA DHAR, [iii O. C. 130]

3. — *Bill of exchange—Notice of dishonor.* Semble—Notice of dishonor, as between endorsee and endorser on bill transactions among Hindus, is not necessary, unless by want of it the endorser would be prejudiced. SOMARIMULL v. BHAIRO DAS JOHURRY - - - - - vii 431

GOPAL DAS v. SHEIKH SYAD ALI, iii A. C. 198

4. — *Demand, money payable on.* Where a sum was lent at interest, the principal to be payable on demand. Held per NORMAN, J., that by Hindu law a demand would be necessary, and limitation would run from the date of the demand. BRAMMAMAYI DAS v. ABHAI CHARAN CHOWDHRY - - - - - vii 489

Contra, PARBATI CHARAN MOOKERJEE v. RAMNARAYAN MATILAL - - - - - v 396

HINDU LAW, CUSTOM.*See HINDU LAW, INHERITANCE*

2. — *Raj, succession to.* Where, in a question as to the right of inheritance to a raj, it was admitted that there was a custom that the reigning raja should name a jubraj and a burra thakur, of whom the first succeeds to the throne, and the latter to the office of jubraj; but it was contended, on the one hand, that if the reigning raja had appointed a jubraj his choice should have been guided partly by an alleged promise or intention on the part of the former raja, and partly by the appellant's preferential title as legal heir by seniority amongst the near kindred; and on the other, that the choice of the reigning raja was absolutely free, and could not be controlled by the wishes of the former raja.—Held, that where there was evidence of a power of selection, the actual observance of seniority, even in a considerable series of successions, could not of itself defeat a custom which established the right of free choice. Where family custom required the union of two things to constitute the legal heir, viz., seniority in age and nearness of kin, and the claimant has but one of these qualifications in himself, viz., seniority, he does not entitle himself to succeed. Where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom. NILKRISTO DEB BARMONO v. BIR CHANDRA THAKUR - - - - - iii P. C. 13

3. — *Raj, succession to—Impartible estate.* A raj is not necessarily impartible. In every case in which a departure from the ordinary law of succession and inheritance is relied on, a particular custom must be proved. COURT OF WARDS v. RAJKUMAR DEO NANDAN SING, [ix 310 note]

HINDU LAW, CUSTOM—continued.

4. — *Primogeniture.* Custom of primogeniture not proved. AMRIT NATH CHOWDHRY v. GAURI NATH CHOWDHRY - vi P. C. 233

5. — A special usage modifying the ordinary law of succession must be ancient and invariable, and must be established to be so by clear and unambiguous evidence. RAMALAKHSHMI AMMAL v. SIVANANANTHA PERUMAL SETHURAYER - - - - - xii P. C. 396

6. — *Uncertain and unintelligible custom.* Held, that a custom in a family that whatever property, as a garden, was planted by females passed to the possession of females to the exclusion of all male heirs, was a custom uncertain and unintelligible, and not one which would be upheld by the Court. Such property was not, therefore, exempt from sale in execution of a decree against the husband of one of the ladies who claimed it. BHAGAWAN DAS v. BALGOBIND SINGH - - - - - i S. N. ix

7. — *Presumption.* Hindu law is in the nature of a personal usage or custom, and probably migratory families or tribes would retain their own usages. The presumption is in favour of the continuance of the ancient family custom. SURENDRA NATH ROY v. HIRAMANI BURMONI - - - - - i P. C. 26

8. — *Impartible estate—Partition, right to.* A custom of impartibility must be strictly proved in order to control the operation of the ordinary Hindu law of succession. The fact that an estate has not been partitioned for six or seven generations does not deprive the members of the family to which it jointly belongs of their right to partition. THAKUR DUREYAO SINGH v. THAKUR DABI SINGH, [xiii P. C. 165]

9. — *Impartible estate—Mitakshara law.* B. S., the father of the plaintiff, who was in possession of an estate in Lohardugga, which had been granted to his ancestor by the Raja of Chota Nagpore, was, on the 10th December, 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be forfeited to Government. On the 16th April, 1858, B. S., having been arrested, was tried and convicted on a charge of rebellion, and sentenced to death. The sentence was carried out on the 21st April, 1858, and an order was made on the same day by the Deputy Commissioner for the confiscation of his property. On the 1st April, 1872, a suit was instituted by the plaintiff, then a minor, to recover possession of the estate of his father B. S. In his plaint he alleged that the estate was granted to the ancestor of B. S. for his maintenance, and was, by the terms of the grant, to devolve on the death of the original grantee on the nearest male heir, and so on in perpetuity; and that no holder had any interest beyond his own life, and had no power of alienation. In his written statement it was alleged that the descent of the estate was governed by Mitakshara law, modified by the usage and custom of the family, by which the estate was impartible and descandi-

HINDU LAW, CUSTOM—continued.

ble, according to the law of primogeniture, on the male heirs of the original grantee; and that, by the Mitakshara law so modified, the plaintiff became on his birth co-owner with his father in the estate, and on his father's death became entitled to it, notwithstanding the sentence of confiscation pronounced against *B. S. Held*, on the case made by the plaint, that the estate was not shown to be inalienable: the fact that the grant was for maintenance, and to the heirs male of the original grantee, would not render it so. *Held*, on the case made in the written statement, that the Mitakshara law did not apply to the case: that law, by which each son has by birth a property in the paternal or ancestral estate, is inconsistent with the custom that the estate was impartible and descended to the eldest son. **THAKOOR KAPILNATH SAHAI DEO v. GOVERNMENT.**

[xiii 445]

10. — *Appointment of daughter.*] The custom of Hindu law, under which a father, in default of male issue, might appoint a daughter to be as a son, or appoint her to raise a son for him, if not obsolete, as appears to be the opinion of the text-writers, is one which in modern times does not seem to have been brought under the consideration of the Courts of justice in India. Assuming the custom to exist, inasmuch as it breaks in upon the general rules of succession, whoever claims by virtue of it to succeed as heir, must bring himself clearly within it. There seems to be no sufficient authority for holding that a father may delegate the power to appoint. **THAKUR JIBNATH SING v. COURT OF WARDS.**

[xv P. C. 190]

11. — *Assam, law in.*] In the absence of any proof or custom to the contrary, the Hindu law in Assam is similar to that prevalent in Bengal. **DEEPO DABEA v. GOBINDO DEB,**

[xi 131 note]

HINDU LAW, DEBTS OF TESTATOR.

See HINDU LAW, JOINT FAMILY.

2. — Though the payment of debts is a charge on the property of a testator, it is not a charge on any specific portion of the property. **NILKANT CHATTERJEE v. PEARY MOHAN DAS** — — — — — iii O. C. 7

See **GOPAL NARAIN MOZOOMDAR v. MUDDOMUTTY GUPTEE** — — — — — xiv 21

HINDU LAW, ENDOWMENT.

See HINDU LAW, PARTITION.

HINDU LAW, WILL.

2. — *Trustee with power of appointment—Failure to appoint.*] A, a Hindu, by a deed of wukfnama (deed of endowment), after reciting that he had "erected and prepared a thakurbari (temple) and the image of thakur (idol), and also a sadavart (almshouse), and had in way of wukf (endowed property) dedicated certain property for the performance of the pujah (worship) of the said thakur and repairing of the house, flower garden and thakurbari, and appointed his sister (B.) the

HINDU LAW, ENDOWMENT—continued.

manager and mutwali (trustee) of the same, authorized B. to spend the profits in the performance of the pujah, &c. As for the future, she (B.) should appoint such person to be the manager and mutwali as may be found by her to be fit, &c., and in like manner all successive mutwalis should have the right of appointing successive mutwalis. To these his heirs should not have right to prefer any claim, &c. B. died without having appointed any mutwali (trustee) to succeed her in the management of the trust. In a suit by the heir of B. to obtain possession of the property covered by the deed against the heirs of A.,—*held*, that the managership, on failure of appointment of a trustee, reverted to the heirs of the person who endowed the property. **JAI BANSI KUNWAR v. CHATTAR DHARI SING,**

[v 181]

3. — *Alienation by shebait—Necessity for alienation.*] Under the Hindu law a permanent alienation by a shebait of endowed property, such as the creation of a patni, is not absolutely null and void. A permanent alienation by a shebait of endowed property under special circumstances of necessity is valid. Want of funds for repairing the temple and restoring the image of the idol is a necessity sufficient under the Hindu law to warrant such an alienation. **TAYUBUNISSA BIBI v. KUWAR SHAM KISHORE ROY** — — — — — vii 621

4. — *Sheba—Presumption—Deed of gift.*] The presumption is that the object of an endowment by a Hindu for the worship of idols is to preserve the sheba in the family, rather than to confer a benefit on an individual; but if there are in the deed of gift no words denoting an intention of the donor that the gift should belong to the family, that presumption will not arise. **CHUNDERNATH ROY v. KOOAR GOBINDNATH ROY; THE COLLECTOR OF MOORSHEDABAD v. SHIBESSUREE DABEA,**

[xi P. C. 86]

5. — *Shebait—Power of alienation—Res judicata.*] As a general rule of Hindu law, property given for the maintenance of religious worship and of charities connected with it, is inalienable. It is competent, however, for the shebait in charge of property dedicated to the worship of an idol, in his capacity of shebait and as manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power to incur such debts is to be measured by the existing necessity for incurring them, the authority of the shebait being in this respect analogous to that of a manager for an infant heir. It being competent for a shebait to borrow money for necessary purposes, it follows that judgments obtained against a former shebait in respect of debts so incurred are binding upon succeeding shebait, who form a continuing representation of the debutter property. But, before applying the

HINDU LAW, ENDOWMENT—continued.

principle of *res judicata* to such judgments, the Court should be satisfied that the judgments relied upon are untainted by fraud or collusion, and that the necessary and proper issues have been raised, tried, and decided in the suits which led to them. Execution of such judgments should be decreed only against the rents and profits of the debutter property. **PROSUNNO KUMARI DEBYA v. GOLAB CHAND BABOO** - - - - - xiv P. C. 450

Affirming the decision of the High Court in *Golab Chand Baboo v. Prosunno Kumari Debya*, in which it was held, that a decree obtained *bonâ fide* against the shebait of an idol is binding on his successor - xi 333

6. — *Right of shebait—Transferability of rights of worship in execution of decrees.* The right of a shebait of a Hindu idol to perform the services and receive the customary remuneration, is not transferable, and cannot be sold in satisfaction of a decree against the shebait. **DUBO MISSEER v. SRINIBAS MISSEER** - v 617

7. — *Rights of worship of a Hindu idol cannot be sold in execution of a decree for the personal debt of a shebait.* **KALICHARAN GIR GOSSAIN v. BANGSHI MOHAN DAS** - vi 727

8. — *An alienation of the debutter property by one shebait was held to be void as against a successor in the shebaitship.* **GOLUCK CHUNDER BOSE v. RUGHONATH SREE CHUNDER ROY** - - - - - xi 337 note
RUMONEE DEBEA v. BALUCK DOSS MOHUNT, [xi 336 note

9. — *Perpetuity—Trust.* A Hindu by will devised certain property, consisting of a family dwelling-house and land, to trustees for ever, for the residence, maintenance, and performance of the worship of certain family idols, and appointed his sons and their descendants in the strict male line to be shebait of the idols for ever, making provision for their residence in the family dwelling-house; the will also contained a clause restraining any partition, division, or alienation of the property so dedicated to the worship of the idols. The testator appointed the trustees executors of his will, and by a codicil bequeathed legacies to various members of his family. In a suit against the executors to recover a legacy so bequeathed—*held*, the devise of the property to the idols was void and inoperative as being a settlement in perpetuity on the male descendants of the testator, and for their use, and not a real dedication for the worship of the idols. **PROMOTHO DOSSEER v. RADHIKA PERSAUD DUTT** - - - - - xiv 175

10. — *Purchase in name of idol—Alienation.* The plaintiff sued as the shebait of a certain idol to recover possession of a zemindari by setting aside an alienation thereof effected by his grandmother, on the ground that it was debutter property dedicated to the idol, and consequently inalienable. It appeared that the property in dispute was purchased by the grandfather of the plaintiff in the

HINDU LAW, ENDOWMENT—continued.

name of the idol, which was set up merely for his private worship in his own house without any priests to perform regularly any religious service for the public benefit of Hindus, and that the property had been dealt with all along as his own private property. *Held*, that this was a mere nominal endowment, and consequently the alienation thereof was not invalid. *Held* also, that a property purchased by a man in the name of his own idol, which no one except himself has the power or right to worship, is not the property of the idol, but the property of the person who purchased it. **BROJOSOONDERY DEBIA v. LUCHMEE KONWABEE** - - - - - xv P. C. 176 note

Affirming the decision of the High Court, [ii A. C. 155

HINDU LAW, FAMILY DWELLING-HOUSE—

Right of son to eject widow—Doctrines of factum valet. A Hindu died leaving a widow and an adopted son, who continued, after his death, to reside in the same dwelling-house in which they had resided with the deceased during his lifetime, and which formed a portion of his estate. The son being an infant, the widow had the management of the house, and let a portion of it to tenants at a monthly rent. Subsequently the son sold the house, as his property by inheritance, to a stranger, who gave the widow and tenants a week's notice to quit. *Held*, that the son, even if he had attained his majority, could not evict the widow, or authorize a purchaser to do so, without providing some other suitable dwelling for her; nor in any case could the tenants be turned out without a month's notice. It seems that the passage in *Katyayana* (2 *Colebrook's Digest*, p. 133) is a restriction, and not a moral precept only, and that the heir of the deceased has not such a right in the dwelling of the family that he can at once, of his pleasure, turn out the females of the family, or sell it and give the purchaser a right to turn them out. **MANGALA DEBI v. DINANATH BOSE** - - - iv O. C. 72

HINDU LAW, GIFT,

See HINDU LAW, WILL.

2. — *Donatio mortis causâ—Gift inter vivos.* A Hindu on his death-bed, a few days before he died, caused certain Government paper to be given to his son in his presence in these words: "Bring out the papers, and give them to my son;" but he did not make or direct endorsement thereof. Subsequently, being asked to endorse them, he said, "I am very weak; how can I sign so many papers? When I get a little strength I will sign them. What cause have you for being anxious?" *Held* by **PHEAR, J.**, that it was a good *donatio mortis causâ*. A *donatio mortis causâ* has not the same signification here as in England. *Held* on appeal by **PEACOCK, C. J.**—The gift was not governed by the strict principles of English law, but by the Hindu law. By English law there was a valid *donatio mortis causâ*; assuming it to be a gift *inter vivos*, it was a valid gift by Hindu law, and the principal and

HINDU LAW, GIFT—continued.

interest secured by the Government papers, and not the mere paper, passed to the donee. By *MACPHERSON, J.* — The circumstances amounted to a gift by a nuncupative will made in contemplation of death. *KUMARA UPENDRA KRISHNA DEB v. NABIN KRISHNA BOSE* — — — — — iii O. C. 118

3. — *Construction of deed of gift—Alienation, suit to set aside.* A., a Hindu living under the Mitakshara law, executed a petition to the Collector, stating that he was in possession of all his ancestral property; that his only son was dead; that he had no wife; that his son had left a widow, B., and two daughters, and no other children or heirs; the petitioner went on to state, "I declare her (B.) my heir; and as, with the exception of the said B., I have no other heir or malik, nor can there be any, of which circumstances I have already preferred information in my petition of 16th April, 1830, and life is uncertain, I consequently request that the name of B., the widow of my late son, be registered in the Collectory mutation book as proprietor and malguzar in the place of my name with regard to the property." &c. "Further, as of B. there are two daughters who, after marriage, by the blessings of Providence, may be blessed with children, they and their children, therefore, are and will be heirs and maliks. But as long as I live I shall keep the management of my own affairs in my own hands, and look after all the transactions of *dikhat*, &c., myself, as heretofore." B. sold and conveyed parcels of the property. In a suit by her daughter's son against the purchasers for a declaration of his reversionary right to the property sold,—*held* that, under the terms of the petition, there was an absolute gift to B. That as the gift was not fettered by any restrictions, the alienation by B. was good and valid. *CHATTAR LAL SING v. SHEWUKRAM* — — — — — v 123

A contrary construction was put on this document in the case of *Mahomed Shamsool Hoda v. Sherakram* (vii 700 note), which was a suit by a grandson of the testator against a purchaser from the widow to set aside the alienation; and the Court held that the widow only took an estate for life, and after her the daughters took absolutely as joint owners. *COUCH, C. J.*, and *MITTER, J.* (*BAYLEY, J.*, dissenting); and this decision was affirmed by the Privy Council in *Mahomed Shamsool Hoda v. Sherakram* — — — — — xiv P. C. 226

4. — *Construction of deed of gift—Absolute gift.* A., a Hindu, executed a *dan-patro* (deed of gift) of a talook in favour of his youngest wife, B., wherein he stated—"You are my youngest wife, and your two sons are minors; therefore, for your charitable expenses (*dan o khairath*) and for the maintenance of your minor sons, I make a gift of the above talook to you. You from this day becoming possessor thereof, after deduction of the Government revenue, with the balance

HINDU LAW, GIFT—continued.

of the profits, will perform acts of charity (*dan o khairath*) and maintain the sons. For this purpose I execute this *dan-patro*." A. died, leaving C., a son by his first wife, two minor sons by B., and B., his widow. The minor sons of B. died unmarried and without issue. B. made a gift of the property to D., her daughter's son. In a suit by C. against B. and D. for a declaration of his reversionary right to the property after the death of B.,—*held*, that the gift to B. under the *dan-patro* was absolute. *PABITRA DASI v. DAMUDAR JANA* — — — — — vii 697

5. — *Gift—Meane profits.* A Hindu by a deed dated in 1840 gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to his brother's grandsons. The daughter was put in possession, was dispossessed in 1858, and died in 1862. Under the terms of the deed, the property then went to the survivor of the two grandsons, who in 1864 sold his rights and interests in the property. In 1865 the purchaser brought a suit, and recovered possession from the defendants. His representatives now sued for meane profits of the property from 1860 to 1865. *Held*, that the plaintiffs were not entitled to meane profits which had accrued due but were uncollected in the lifetime of her daughter; that such meane profits would go to her heirs, who would alone be entitled to them. *GURU PRASAD ROY v. NAFAR DAS ROY* — — — — — iii A. C. 121

6. — *Construction of deed of gift.* A Hindu directed his wife to settle certain property after his decease upon their daughter. She did so by deed of gift (*hibbanama*), giving it to their daughter, "to be enjoyed by her, her sons, and grandsons, &c., one after another; the other heirs not to have any concern with it." *Held*, that the plaintiff as the daughter's daughter had no right to share therein with her brothers, the daughter's sons. *SRINATH GANGOPADHYA v. SARBAMANGALA DEBI*, [ii A. C. 144

HINDU LAW, INHERITANCE—Bandhus—Mitakshara. The enumeration of bandhus, or cognate kindred, given in Mitakshara II, s. 6, art. 1, is not exhaustive. The maternal uncle and the father's maternal uncle will take as heirs in preference to the Crown. *GRIDHARI LALL ROY v. THE GOVERNMENT OF BENGAL*, [i P. C. 44

2. — *Sister's son—Mitakshara.* In the absence of nearer relatives a man may be heir to his mother's brother as regards property subject to the Mitakshara. *AMRITA KUMARI DEBI v. LUKHINARAYAN CHUCKERBUTTY*, [ii F. B. 28

3. — *Separated brother—Reunion.* Of three brothers forming together a joint Hindu family, one separated himself therefrom, and died leaving a son, the plaintiff. The other two with their families remained joint: one died leaving a son, the defendant; the other died leaving a widow. On the widow's death

HINDU LAW, INHERITANCE—continued.

this suit was brought to establish the plaintiff's right as one of the two next reversionary heirs. *Held*, that a separated brother does not inherit, and that the defendant was alone entitled to succeed. *Quere*, as to the effect of reunion in inheritance. **KESABRAM MAHA-PATTAR v. NANDKISHOR MAHA-PATTAR**, iii A. C. 7

4. — *Separated and reunited brothers—Widow.*] A Hindu died leaving a widow, a brother, and two nephews, the plaintiff and the defendant. The brother was the defendant's father; he and the widow were since dead, the widow having died in the brother's lifetime. The plaintiff claimed to be entitled to a moiety of the estate of the deceased by inheritance. The defendant claimed the whole on the ground that the deceased lived as a reunited or associated brother with his (the defendant's) father, whereas the plaintiff was the son of a separated brother of the deceased. *Held*, that the material issue to be tried in the case was whether the widow lived in a state of reunion with the defendant, as her husband had done with the defendant's father, or whether she at the time of her death lived separate from him, though in the same family house. **RAMHARI SARMA v. TRINIRAM SARMA**, [vii 337]

5. — *Widow of paternal uncle—Nephew.*] The widow of a paternal uncle is, according to Hindu law, no heir to her nephew. **UPENDRA MOHAN TAGORE v. THANDA DAS** iii A. C. 349

6. — *Grandson of maternal grandfather's brother.*] According to Hindu law, the grandson of a brother of a grandfather of the deceased is heir to his property in default of nearer heirs. **BRAJA KISHOR MITTER MOZUMDAR v. RADHA GOBIND DUTT**, [iii A. C. 435]

7. — *Father's brother's daughter's son—Savinda.*] A father's brother's daughter's son is entitled to be recognised as an heir according to the Hindu law current in the Bengal school. **GURU GOBIND SHAHA MANDAL v. ANAND LAL GHOSE MAZUMDAR** - v F. B. 15

8. — *Mitakshara—Gentiles.*] According to the Mitakshara the great-great-grandson of the great-great-grandfather of the deceased is entitled to succession as one of the gentiles. **BYHA RAM SINGH v. AGAR SINGH** - - - - - v P. C. 293

9. — *Mitakshara—Great grandson—Bandhu—Gentiles—Father's sister's son.*] The great grandson of the great-great-grandfather of the deceased is, according to the Mitakshara, a nearer heir to the deceased than his father's sister's son. **THAKUR JIB-NATH SINGH v. COURT OF WARDS** - - v 442
S. C. on appeal to the P. C. x P. C. 190

10. — *Brother—Sister.*] A sister cannot succeed her brother as heir by Hindu law. **RUKINI DAS v. KADERNATH GHOSE**, v Ap. 87

11. — *Property purchased by widow benami for a relation—Nephew—Stepson.*] A stepson made over property to his stepmother for her

HINDU LAW, INHERITANCE—continued.

support. Out of the produce she bought properties for her nephew in the names of other parties. *Held*, under the circumstances, that the purchased property, on her death, went to the nephew, and not to the stepson as heir of her husband. **CHANDRANATH ROY v. RAM-JAI MAZUMDAR** - - - - - vi P. C. 303

12. — *Daughter's estate—Stridhan—Jain law—Mitakshara.*] Under the Mitakshara law the estate which a daughter takes in property inherited by her from her father, is only a qualified estate; and on her death, such property descends to the heirs of her father, and not to her own heirs. **CHOTAY LALL v. CHUNNOO LALL** - - - - - xii 225

13. — *Daughter, alienation by.*] A daughter inheriting property from her father takes a life-interest only in such property, and has no power of alienation beyond her lifetime. The heir of the father on her death takes the property as heir of the ancestor, and not as her heir. **DEO PERSHAD v. LUJOO ROY**, xiv 245 note

14. — *Mitakshara law.*] Under the Mitakshara law the unmarried daughters succeed only in priority of her married sisters, and not to the ultimate exclusion of such sisters' right of inheritance from their father. Therefore, where a Hindu under the Mitakshara died leaving two daughters, one married and the other unmarried, and the latter succeeded to the father's estate, and then married and subsequently died leaving a son and her sister her surviving,—*held*, that the sister was entitled to the property as the next heir of the father. **DOWLUT KOER v. BURMADEO SAHAY**, [xiv 245 note]

15. — *Mitakshara law—Exclusion of females from succession—Impartible joint ancestral property—Custom.*] A female cannot inherit an impartible ancestral estate belonging to a joint Hindu family governed by the Mitakshara, where there are any male members of the family who are qualified to succeed as heirs. This is a rule of law, and not dependent on custom. A custom modifying the law must be a custom to admit females, not a custom to exclude them. **HIRANATH KOER v. RAM NARAYAN SINGH** - - - - - ix 274

But see **Tikait Durga Prasad Sing v. Durga Kunwari**, where to a ghatwall estate which descended from the father to the eldest son, the younger sons having allowances made to them, a widow was held entitled to succeed as heir to her son. - - - - - ix 306 note

16. — *Impartible estate—Mode of succession to—Priority of marriage—Priority of birth—Custom—Evidence.*] By the general Hindu law, where a subject of inheritance is from its nature indivisible, and can, therefore, descend to one only of several sons, the succession as between sons by different wives (other than the first wife) of equal caste, is to be determined by the priority of birth of the sons, and not by the priority of marriage of their respective mothers; and, therefore, with respect to the succession to an impartible

HINDU LAW, INHERITANCE—continued.

seemindari in the district of Tinnevely in the Presidency of Madras, the son of the third wife is, in the absence of proof of any special custom or family usage to the contrary, to be preferred as heir to a subsequently born son of the second wife. **RAMALAKSHMI AMMAL v. SIVANANANTHA PERUMAL SETHURAYER.** [xii P. C. 396]

17. — *Mitakshara law—Sister's son.*] By the Mitakshara, a male descendant in the fifth degree from the great grandfather of the *præpositus* succeeds to the exclusion of the sister's son. **KOORER GOLAB SING v. RAO KURUN SING; RAO KURUN SING v. MAHOMED FYAZ ALI KHAN** — — — — — x P. C. 1

18. — *Mitakshara law—Brother's daughter's son.*] A brother's daughter's son succeeds as heir, under the Mitakshara, in the absence of nearer heirs. **DURGA BIBEE v. JANAKI PERSHAD.** [x 341]

19. — *Mitakshara law—Stepmother and step-grandmother.*] According to the Mitakshara, in a divided family, a stepmother cannot succeed to the estate of her stepson, or a step-grandmother to the estate of her step-grandson. **LALA JOTI LAL v. DURANI KOWER; LAL KOWER v. JAIKARAN LAL.** [Sup. Vol. 67]

20. — *Gentiles—Cognates.*] In looking for an heir under Hindu law, the gentiles must be exhausted before the cognates are entitled to succeed. **DIGDAYI v. BHATAN LAL** v 448 note

21. — *Great grandson of paternal grandfather—Brother's daughter's son.*] By the Hindu law the great grandsons of the paternal grandfather are entitled to succeed as heirs to the deceased proprietor, and are to be preferred to the brother's daughter's son, because, although the former can offer but one oblation and the latter two, yet that offered by the former is offered to a paternal ancestor, and is, therefore, of superior religious efficacy to those offered by the latter, which are to maternal ancestors only. **GOBIND PROSHAD TALOOKDAR v. MOHESH CHUNDER SURMA GHUTTUCK.** [xv 35]

22. — *Mitakshara law—Succession of daughters.*] *Sembla.*—According to the Mitakshara law, a married daughter with male offspring is entitled to inherit in preference to a sonless widowed daughter. **GOOOOLANUND DASS v. WOOMA DAZE** — — — — — xv 405

23. — *Childless widow—Joint estate—Survivorship.*] *R.*, holding estates in Bengal jointly with his brothers as an undivided Hindu family, died leaving a widow *S.* and three unmarried daughters, *B.*, *S. M.*, and *N.* On her husband's death *S.* continued to reside with his brothers, and was supported out of the income of the joint estate. All the daughters married during the lifetime of *S.*, and *B.* became a widow without having had a child. After *S.*'s death, and during the lifetime of *S. M.*, *N.* also became a childless widow. *S. M.* died after her

HINDU LAW, INHERITANCE—continued.

mother, leaving a son *R. K. R. K.*, on attaining majority, sued to recover, with mesne profits, a four-anna share of the ancestral estates to which he claimed to be entitled on his mother's death as heir of *R.*, and from which he alleged he had been dispossessed by the representatives of *R.*'s brothers, whom he made defendants in the suit, joining *B.* and *N.* with them as co-defendants. *Held*, that *B.* being a childless widow at the time of her mother's death, could take no interest in her father's estate. *Held* also that, on their mother's death, *S. M.* and *N.*, as heirs of their father, took a joint estate in his succession, and on *S. M.*'s death, the estate which had come to her and *N.* jointly, survived to *N.*, since the fact of the latter being at that time a childless widow did not destroy the right of survivorship which she had previously acquired by inheritance. **AMIBTOLALL BOSE v. RAJONEEKANT MITTER** — — — — — xv P. C. 10

HINDU LAW, INHERITANCE, EXCLUSION FROM INHERITANCE.*See HINDU LAW, WIDOW.*

2. — *Hindu becoming a byragee.*] A Hindu becoming a byragee, if he chooses to retain possession of, or to assert his right to, property to which he is entitled, may be doing an act which is morally wrong, but in which he will not be restrained by the Court, inasmuch as such an act does not exclude him from any rights he may have in such property. **JAGANNATH PAL v. BIDYANAND** — i A. C. 114

3. — *Deaf and dumb person.*] According to Hindu law, the son of a deaf and dumb man, born after the death of his grandfather, cannot succeed to the estate descended from his grandfather. *A.* died leaving four sons. One *B.* was born deaf and dumb. *B.* lived in commensality with his brothers. Some time after *A.*'s death a son was born to *B.* *Held*, that *B.*'s son was not entitled to succeed as heir to a share of the property descended from *A.* **PARESHMANI DASI v. DINANATH DAS.** [i A. C. 117]

4. — *Blindness.*] A Hindu died in 1832, leaving an only son, who had been blind from his birth, and two widows, the survivor of whom died in 1849. On the death of the surviving widow the nephew succeeded as heir, the blind son being by Hindu law excluded from inheritance. The blind man having married, a son was born to him in 1858. The blind man died in 1861. *Held* by **NORMAN, J.**, that on the birth of the blind man's son he became entitled to the inheritance from which his father had been excluded. *Held* on appeal (by a Full Bench) that by Hindu law an estate once vested cannot be divested in favour of the son of an excluded person born after the death of the ancestor. Such ruling does not apply to the case of the son of an excluded person if, having been begotten and being in the womb at the time of the ancestor's death, he is afterwards born capable of inheriting. **KALIDAS DAS v. KRISHAN CHANDRA DAS.**

[ii F. B. 103]

HINDU LAW, INHERITANCE, EXCLUSION FROM INHERITANCE—continued.

5. — The blindness which, under the Hindu law as recognised in Bengal, excludes an afflicted person from inheritance, refers to congenital blindness, and not to loss of sight which has supervened after birth. **MOHESH CHUNDER ROY v. CHUNDER MOHUN ROY**,

[xiv 273

6. — *Insanity.*] A Hindu lunatic may be possessed of property though he cannot take it by inheritance. **COUET OF WARDS v. KUPULMUN SINGH** - - - - - x 384

7. — *Insanity—Incurability.*] In order to exclude a person from inheritance under the Hindu law on the ground of insanity, it is sufficient to show that when the succession opened he was mad, and not in a condition to perform the funeral oblations. Proof that his insanity was incurable is not necessary. **DWARAKANATH BYSAK v. MAHENDRANATH BYSAK** - - - - - ix 198

8. — The condition of a minor's mind at the time the succession opens out to him is to be looked to; therefore, where a party obtained a decree declaratory of his right to succeed to certain property as reversioner on the death of the widows, and on their death he had become insane, *held* he was not entitled to execute the decree. **BRAJA BHUKAN LAL AHUSTI v. BICHAN DOBI** - - - - - ix 204 note

HINDU LAW, JOINT FAMILY—Debts incurred for family purposes.] *N., G., and H.* were three brothers living together as a joint Hindu family. After the death of *N.* and *G.* decrees were obtained against *N.'s* widow, and satisfied by her in respect of monies borrowed by *N.* and *H.* as the managing members of the family and spent for family purposes, while *G.'s* widow was living in the family. In a suit by *N.'s* widow for contribution against *G.'s* widow, *held*, that though no legal necessity had been shown for borrowing, the defendant was bound to pay her share as the money had been spent for family purposes while she was living in the family. **BIMALA DEBI v. TARASUNDARI DEBI**, [vi Ap. 101

2. — *Joint family—Separate acquisition—Onus probandi—Purchase by one member of family in his own name, but with joint funds.*] In a suit by a member of a joint Hindu family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of *R.*, one member of the family, for his separate debt, the defendants sought to rebut the presumption that the property in dispute was part of the joint estate by showing that, though the members of the family were joint in food, and at particular seasons of the year lived together in the family dwelling-house, they also had separate dealings and funds of their own; and that while the family had some ancestral estate, several members of the family had acquired separate property from their own funds, and dealt with

HINDU LAW, JOINT FAMILY—continued.

it as their own without reference to the other members of the family. They also relied on the following facts as showing that the property in dispute was the separate property of *R.*, viz., that during *R.'s* lifetime the other members of the family allowed him to appear to the world as the sole owner thereof, and on one occasion when *R.*, *B.* the *kurta*, and a third member of the family, entered into a security-bond with the Collector, whereby *R.* pledged this property, and the two others pledged other properties, each of them described the property pledged by him as being in his possession "without the right of any co-sharers." On the other hand the plaintiff, in addition to oral evidence to show that the property in dispute had been purchased out of the joint family funds, although the purchase was made in the name of *R.* alone, filed the family account-books and the private account-books of *R.* for the same purpose, as well as certain letters which passed between *B.* and *R.* relative to the purchase of the property. *Held*, that the evidence as to the separate trading funds and property of the several members of the joint family, and their independent dealing with such property, disclosed such a state of things as might be fairly held to weaken, if not altogether to rebut, the ordinary presumption of Hindu law as to property in the name of one member of a joint family, and to throw upon the plaintiff the onus of establishing the joint nature of the property claimed by clear and cogent evidence. *Held* also, that the mere fact that *R.*, while trading on his separate account, was permitted by the other members of the joint family to appear to the world as the sole owner of family estates, did not disentitle those members to recover from the defendant, the purchaser at a sale in execution of a decree against *R.*, their own share of such estates. **BODH SING DOODHARIA v. GUNESH CHUNDER SEN**,

[xii P. C. 317

3. — *Separate acquisition—Presumption—Onus probandi.*] The presumption of Hindu law that any property acquired during the time a Hindu family remains joint belongs to all the members of the joint family, does not take away the onus which lies on the plaintiff in a suit to recover a share of the property of proving his case; it merely aids him in proving it. Such presumption is liable to be rebutted by means other than inquiring as to the source from which the purchase-money of the property was derived. That criterion, though the most satisfactory, is not indispensable. Evidence that the property claimed to be joint was purchased in the name of one member only, that after the purchase the members separated, and each member carried on business separately, and that the property was thenceforward in the exclusive possession, and used for the business, of the member in whose name it had been purchased, is evidence sufficient to rebut the presumption that the property was joint. **BHOLANATH MAHTA v. AJOODHIA PRASAD SOOKUL** - - - xii 336

HINDU LAW, JOINT FAMILY—continued.

4. — *Separate acquisition—Presumption—Onus probandi—Nucleus.*] *Sembla.*—When property has been purchased by an individual member of a joint Hindu family, the burden of proof is on those who claim it to be joint property to show that there was a nucleus of joint property out of which it could have been purchased. *DENONATH SHAW v. HURRY-NARAIN SHAW* - - - - - xii 349

5. — *Onus probandi—Presumption.*] The normal condition of a Hindu family being joint, it must be presumed to remain joint, unless some proof of a subsequent separation is given; and where property is shown to have been once joint family property it is presumed to remain joint until the contrary is shown; but the mere fact of a family being joint is not enough to raise a presumption in law that property acquired by one member of that family is joint property. Where A., as purchaser, claimed a share in property as being joint family property, — *held*, that A. was not only bound to show that the family was joint, but that the property in question became joint property when acquired, or that at some period since its acquisition it had been enjoyed jointly by the family. *SHIU GOLAM SING v. BARAN SING* - - - - - i A. C. 164

6. — *Onus probandi—Presumption.*] The mere fact of a Hindu family living in commensality is not sufficient to raise a presumption of their property being joint. The existence of joint funds out of which the property might have been purchased must also be proved to raise the presumption of the property being joint. *RADHIKA PRASAD DEY v. DHARMA DAS DEBI* - - - iii A. C. 124

7. — *Purchase—Presumption arising from commensality.*] The mere fact of one person living jointly or in commensality with others, affords no presumption that property purchased by that person was purchased with the joint funds. *KRISTO CHUNDER KURMOKAR v. RUGHONATH KURMOKAR* - xii 352 note

8. — *Ancestral property—Registration of name of one member as proprietor—Onus probandi.*] Where property is proved to be ancestral, the mere registration of one brother as proprietor is of little value as supporting a case of the property not being joint, and the burden of proving that the property is not joint rests on him who alleges that to be the case. *AMBIT NATH CHOWDHRY v. GAURI NATH CHOWDHRY* - vi P. C. 232

9. — *Separate acquisition—Presumption—Onus probandi.*] The plaintiffs sued to have their rights declared under a mokurari-maurasi lease obtained by I., father of the defendant, but it was said with joint funds and for the joint family, which consisted of I. and his two brothers, fathers of the plaintiffs. The defence was that the lease was granted to I. after the dissolution of commensality. The existence of any nucleus of joint property was not proved. *Held* that, where one member of a joint family is found to be

HINDU LAW, JOINT FAMILY—continued.

in possession of any property, the family being presumed to be joint in estate, the presumption is, not that he was in possession of it as separate property acquired by him, but as a member of a joint family. Therefore, the burden of proof was on the defendant to show that I. had acquired the property separately, and that it was property which could by law be treated as a separate acquisition. *TARUCK CHUNDER PODDAR v. JODESHUR CHUNDER KOONDOO* - - - - - xi 193

10. — *Purchase from one member—Notice of joint character of property.*] Presumably, every Hindu family is joint in food, worship, and estate; and this presumption applies in the absence of any evidence of a nucleus of joint property, and even without evidence that the family is undivided. A purchaser, therefore, from one member of a Hindu family is affected with notice of the claims of the other members. *GOBIND CHUNDER MOOKERJEE v. DOORGAPERSAD BABOO* - - - - - xiv 337

11. — *Joint family—Separate Acquisition—Onus probandi.*] In a suit by a purchaser to recover a share in certain property of one of three brothers, who were admittedly living in commensality, the plaintiff alleged the property was purchased by his vendor and the other brothers with joint funds, the defendants alleging that it was bought by one of them other than the plaintiff's vendor with his separate funds. *Held*, the onus was on the plaintiff to show that there was a joint fund from which the property could have been purchased. There can be no presumption of joint ownership from the mere fact of commensality. *KHILUT CHUNDER GHOSH v. KOONJLALL DHUR* - - - - - xi 194 note

12. — Where the plaintiff, a member of a joint Hindu family, claimed a share in certain property as having been purchased with the joint funds, and the defendant alleged that it was purchased by him with his own funds; and it was proved that the joint family property was not at the time of the purchase sufficient, after supporting the family, to leave any surplus funds from which the property in suit could have been purchased, *held*, that the presumption of joint ownership was rebutted, and it was for the plaintiff to show the acquisition of the property with joint funds. The party alleging self-acquisition is not in every case bound to show the source from which the purchase-money was derived. *DHUNOOKDHAREE LALL v. GUNPUT LALL* - - - xi 201 note

13. — *Mortgage of joint family property—Powers of karta—Acknowledgment by karta or by executor under Hindu will—Acquiescence.*] H., a Hindu, died, leaving two adult and two minor sons, and having made a will, or *anumatipatra*, addressed to his two eldest sons, L. and G., whom he thereby appointed *malik mukhtars* of the whole of his estate with full powers of management. He directed them to maintain his widow and minor sons, and to pay the marriage expenses of the latter

HINDU LAW, JOINT FAMILY—continued.

out of the joint estate; and further directed them to pay his liabilities, and, if necessary, to raise money for that purpose by sale or mortgage; the necessary documents to be signed by L. and G., "the names of the infants being signed by you as guardians and executors." In case of the death of either L. or G., the will provided that all the powers of the executors should be vested in the survivor; the minors to have the same powers upon attaining majority. The will further provided that the executors should, when the minors came of age, "make over to them with explanation the share of each;" and that the four sons should take the property in equal shares. L. died after his father, leaving a widow, and having made a will, whereof he appointed G. executor, and G. subsequently obtained a certificate under s. 7, Act XL of 1858, in respect of the property of his minor brothers. Thereafter G., by a deed in the English form, which was executed by him alone "as executor of H." and also "as executor of L.," mortgaged a portion of the property to the plaintiff to secure Rs. 6,847-3-3. Of this sum Rs. 947-3-3 were advanced to G. at the time of the mortgage, and were applied by him for the benefit of H.'s estate, Rs. 1,000 were advanced to pay a debt due from L. to third persons, the remainder being in respect of debts of H., all of which, however, with the exception of one debt of Rs. 100, were barred by the law of limitation. In a suit by the mortgagee for an account and sale, or foreclosure of the mortgaged property, it appeared that one of the minors had attained his majority when the mortgage was executed, and the other some years thereafter, and that both had been informed of the mortgage several years before the suit, and had then raised no objections. No question as to the effect of the limitation law on the mortgage was raised on the pleadings or at the trial. *Held* by MARBY, J., that although the mortgage was not executed in accordance with the will of H., the younger sons had stood by and had taken the benefit of the transaction, and could not, therefore, question it. A member of a joint Hindu family is bound, when he comes of age, to make himself acquainted with the acts during his minority of the manager, and to express his dissent at once if he disapprove of such acts. No evidence having been offered as to L.'s estate when the mortgage was executed, or that L.'s widow knew of the mortgage, the suit must be dismissed as against her. *Held* on appeal, by COUCH, C.J., and PONTIFEX, J., that debts by Hindu law being a charge upon the estate of the debtor, and the intention of H., as shown by the provision in his will for the maintenance of his widow and minor sons, being that the family should for a time continue to be joint, no charge or trust was created by the clause in H.'s will for payment of his debts, and therefore the fact that, in executing the mortgage, G. professed to act under the will and not as *karta*, did not invalidate the mortgage. For the same reason, the clause for payment of

HINDU LAW, JOINT FAMILY—continued.

debts could not prevent the operation of the law of limitation. The manager of a joint Hindu family, or the executor of a Hindu will, has no power by acknowledgment to revive a debt barred by the law of limitation, except as against himself. G., as *karta* of the joint family, could not make a valid mortgage of L.'s share separately from the shares of the other members of the family; his estate therefore was liable to pay the plaintiff the Rs. 1,000 borrowed to pay L.'s debt, and his representatives could claim to be repaid from L.'s estate. **GOPALNARAIN MOZOOMDAR v. MUDDOMUTTY GUPTEE; SHOSHEEBHOOSUN MOZOOMDAR v. MUDDOMUTTY GUPTEE; MUDDOMUTTY GUPTEE v. BAMASOONDERY DOSSEE,** [xiv 21

14. — Mitakshara law — Survivorship—Mortgage of share in joint family property.]

A member of a Hindu family living under the Mitakshara law and having joint family property, died entitled to an undivided share in such property, leaving two widows him surviving. The widows were sued in their representative capacity in respect of debts incurred by him during his lifetime on his own account, and decrees were obtained against them. In execution, an interest in certain portions of the joint family property, to the extent of the share to which the deceased was entitled in his lifetime, was sold, and the auction-purchasers obtained possession of it. *Held*, that the share of the deceased did not at his death pass to his widows, but that there being no male issue it passed to the remaining members of the family by survivorship, and could not be rendered liable to the debts of the deceased in a suit against his widows. *Quære*.—Whether those who take the share by survivorship are liable for the debts of the deceased to the extent of his share? A member of a joint Hindu family has no authority, without the consent of his co-sharers, to mortgage his undivided share in a portion of the joint family property, in order to raise money on his own account, and not for the benefit of the family. **SADABART PRASAD SAHU v. FOOLBASH KOER** — iii F. B. 31

15. — There is nothing in *Rajaram Tewari v. Luchman Prasad* (Sup. Vol. 731) or in *Sadabart Prasad Sahu v. Foolbash Koer*, to justify the contention that where there is an alienation made by one shareholder, and another sharer sues to set aside that alienation, it follows as a consequence that a party who sues to set aside the alienation must obtain a decree. **SRI PRASAD v. RAJ GURU TRIAMBUK-NATH DEO** — — — — — vi 555

16. — According to *Sadabart Prasad Sahu v. Foolbash Koer*, a sale of undivided ancestral property by a father without any legal necessity and without the consent of all the co-sharers, is, under the Mitakshara law, invalid. It is not valid even as regards the father's share. A son suing to set aside such an alienation is, according to that case, entitled to a declaration that the alienation is void altogether. The son suing in the father's lifetime

HINDU LAW, JOINT FAMILY—continued.

on behalf of the family may be entitled to a decree for possession. Upon what terms that decree should be made, will, according to the decision in *Modhoo Dyal Singh v. Kolbur Singh* (Sup. Vol. 1018), depend on the equity which the purchaser may have to a refund of the purchase-money, or to be placed in the position of an encumbrancer as against the joint family in the particular case. *HANUMAN DUTT ROY v. KISHEN KISHOR NARAYAN SINGH* - - - - - viii F. B. 358

17. — *Account—Partnership.* The manager of a joint Hindu family is not, by reason of his occupying that position, bound to render an account to the other members of the family. There is no analogy in this respect between a joint Hindu family and a partnership. Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept on the understanding that the profits, when realized, should be divided amongst the individual members in certain proportions, and that the expenses of each member should be credited and charged in the name of each member,—*held*, that this was in the nature of a partnership, and an account was decreed. *RANGANMANI DAS v. KASINATH DUTT*, [iii O. C. 1]

18. — *Managing member—Liability to account.* A managing member of a joint Hindu family is bound to render an account of his management to his co-sharers, and he is liable to a suit if he refuses to do so. And such suit will lie even if the parties suing were minors during the period for which the account is asked. *ABHAYCHANDRA ROY CHOWDEY v. PYARIMOHUN GOHO* - - - - - v F. B. 347

HINDU LAW, MAINTENANCE.

See HINDU LAW, WIDOW.

2. — *Illegitimate son.* In a suit for maintenance brought by an illegitimate son of a Hindu zemindar deceased,—*held*, that it was established that the plaintiff was the natural son of such zemindar, and recognized by him as such, it not having been essential to the plaintiff's title to maintenance that he should be shown to have been born in the house of his father, or of a concubine possessing a peculiar status therein. Case remanded for the Courts in India to try whether such maintenance can be a charge upon an impartible zemindary, or, if not, out of what property or fund, if any, the son was entitled to be paid. *MUTUSWAMY JAGAVEERA YETTAPPA NAIKEN v. VENKATASWARA YETTAPPA* - - - - - ii P. C. 15

3. — *Son's widow.* A Hindu died possessed of no property, but leaving a widow. On his death she left the house of her father-in-law, and went to reside at her father's house. Her father-in-law was not possessed of any ancestral property. *Held*, that she could not sue her father-in-law for a sum of money

HINDU LAW, MAINTENANCE—continued.

on account of maintenance. *KHETRAMANI DASI v. KASHINATH DAS* - - - ii A. C. 15
UMACHARAN CHOWDREY v. NITAMBINI DEBI - - - - - ii S. N. xi

4. — *Adult son.* According to the Hindu or Jain law, a father is not bound to maintain a grown up son. *PREMCHAND PEPARAH v. HULASCHAND PEPARAH* - - - iv Ap. 23

5. — *Wife—Misconduct of husband.* A Hindu kept a Mahomedan mistress, and by such conduct compelled his wife under her religious feelings to leave the house. She went and resided with her mother, and continued to live in chastity. *Held*, the husband was bound to give maintenance to his wife. *LALA GOBIND PRASAD v. DOULAT BATTI* - - - vi Ap. 85

6. — *Grandson—Misconduct of mother.* A widowed Hindu mother, who refuses to dwell with her minor son in her father-in-law's house, and sells her infant daughter in marriage to a low caste person, thereby injuring the social position of her father-in-law's family, is not entitled to recover maintenance on account of her son from her father-in-law. *MANMAHINI DASI v. BALAK CHANDRA PANDIT* - - - viii 23

7. — *Widow—How far maintenance is a charge on husband's estate—Notice.* As against one who takes as heir, a Hindu widow has a right to maintenance out of the property in his hands. She also has a right to maintenance out of such property in the hands of any one who takes it with notice of her having set up a claim for maintenance against the heir. By the law of Bengal she has no lien on the property for her maintenance against all the world irrespective of such notice. *BHAGABATI DASI v. KANAI LALL MITTER*, [vii 225]

See NISTARINI DASI v. MAKHUNLALL DUTT, [ix 11]

8. — *Widow—Residence—Unchastity.* A Hindu widow is not bound to reside in her deceased husband's family house; and she does not forfeit her right to maintenance out of her husband's estate by going to reside elsewhere unless she leaves her husband's house for the purpose of unchastity, or for any other improper purpose. Arrears of maintenance may be awarded. *PIETHRE SINGH v. RAJ KOBER*, [xii P. C. 233]

9. — *Illegitimate children.* According to Hindu law illegitimate children of the Sudra caste can inherit, and are entitled to maintenance. *INDERAN VALUNGYPULY TAVER v. RAMASWAMY PANDIA TAVER* - - - iii P. C. 1

HINDU LAW, MARRIAGE—Illegitimate children—Sudras. According to the Hindu law prevalent in Madras, legitimate children of illegitimate parents of the Sudra caste can contract a legal and valid marriage. The marriage between persons of different sections of the Sudra caste is valid and legal. *INDERAN VALUNGYPULY TAVER v. RAMASWAMY PANDIA TAVER* - - - - - iii P. C. 1

HINDU LAW, MARRIAGE—continued.

2. — Under Hindu law, it is not necessary, in order to render a child legitimate, that the procreation as well as the birth should take place after marriage. *OOLAGAPPA CHETTY v. ARBUTHNOT; COLLECTOR OF TRICHINOPOLY v. LEKAMANI; PEDDA AMANI v. ZEMINDAR OF MARUNGAPULI* - - - xiv P. C. 118

HINDU LAW, PARTITION — Mitakshara law—Evidence—Onus probandi.] According to the Mitakshara, an agreement for a partition, although not carried out by actual partition of the property, is sufficient to constitute a division of the family, so as to entitle the widow of a deceased brother to succeed to his share of the ancestral property in preference to the surviving brothers. The fact of the family having separate house and field is, according to the Mitakshara, sufficient evidence of partition. The onus of proving re-union is upon the party pleading that there has been a re-union after partition. *SURANENI VENKATA GOPALA NARASIMHA ROY v. SURANENI LAKSHMI VENKAMA ROY* - - - iii P. C. 41

2. — *Co-heiresses — Jurisdiction.]* Two co-heiresses in joint possession of property by the Hindu law are in the nature of co-parceners, and one of them can enforce partition against the other notwithstanding the limited character of their tenure, and although such partition is not binding on the reversioners. A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore where, in a suit for partition, it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the mofussil property were included, and that thereupon the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. *PADMA-MANTI DAS v. JAGADAMBA DAS* - vi 134

3. — *Agreement not to partition — Purchaser of share of member of joint family—Alienation.]* The members of a joint Hindu family entered into an agreement not to partition their estate, which was to "continue in one joint undivided occupation as at present." *Held*, that a purchaser at a sheriff's sale of the share of one of the contracting parties was not bound by the agreement. Such an agreement does not prevent a party to it from alienating his interests in the estate. *ANAND CHANDRA GHOSH v. FRANKISTO DUTT*. [iii O. C. 14]

4. — *Agreement not to partition—Dedication to idol—Mortgage.]* *R. D.*, a Hindu, died possessed of large property, both real and personal, and leaving surviving him two sons, *P. D.* and *A. D.*, his sole heirs, who, after his death, came to an amicable partition of some portion of the joint estate, but continued to hold jointly the family dwelling-house and the land thereto attached. On 26th November,

HINDU LAW, PARTITION—continued.

1849, *P. D.* and *A. D.* executed a deed of trust of the joint family dwelling-house, among other properties, by which, after reciting that they had kept certain property joint, and that they had been performing the family ceremonies, &c., and that it was their intention that they should be performed in the same manner at the family dwelling-house, and after setting apart certain real property for the expenses thereof, it was agreed that "we will, during our lifetime, jointly perform the said acts after that manner and according to practice: on the death of one of us, the survivor and the executor or representatives of the deceased person will act after that manner and according to practice for a period of twenty years from the date of the death of him who shall die last; our executors or representatives will jointly perform, out of the proceeds of the aforesaid real property, the *pooja* and so forth at our dwelling-house in Simla in Calcutta, and entertain strangers at the garden which once appertained to *R. S. B.* The said real property and our dwelling-house and the baitakhana in station Sulkea, &c., neither we nor our heirs or any of them will have the power to make a partition thereof during the said prescribed period. On the expiration of the said period should our representatives wish to make a partition of all the said real property, &c., having made a division, they will have the power to perform the acts and ceremonies separately." The said dwelling-house was thereafter held jointly by *P. D.* and *A. D.* on the trusts of the deed of 26th November, 1849. *P. D.*, in December, 1849, died, leaving two adopted sons, *M. D.* and another, on the death of whom the plaintiff was adopted. *P. D.* also left a will, whereby he directed that the purport of the deed of 26th November, 1849, should never be violated. *A. D.* died 30th January, 1856, leaving a will, whereof he appointed the defendants *N. D.*, *C. G.*, and *S. G.*, executors, and thereby he devised all his property, subject to certain legacies, to *C. G.* and *S. G.* By his will he charged his executors not to fail to carry out the agreement. The ceremonies continued to be performed as directed in the deed by the plaintiff and the defendants *M. D.*, *N. D.*, *C. G.*, and *S. G.* By deed dated 14th July, 1863, *N. D.*, *C. G.*, and *S. G.* mortgaged, for valuable consideration, to the defendant *A. B. M.*, certain property, including an undivided share of the said dwelling-house. *A. B. M.* afterwards instituted a suit on the mortgage against *N. D.*, *C. G.*, and *S. G.*, and by the decree in that suit it was, on 14th April, 1870, ordered that the defendants should be absolutely foreclosed of all equity of redemption in the said family dwelling-house and other premises comprised in the mortgage. Subsequent proceedings, taken by *A. B. M.* against the defendants *N. D.*, *C. G.*, and *S. G.*, resulted in *A. B. M.* obtaining a writ of possession against them, which he endeavoured, but unsuccessfully, to have executed. The present suit was brought

HINDU LAW, PARTITION—continued.

to have the deed of trust of November 26th, 1849, established, and to have the trusts thereof declared. In 1854 two suits had been brought in the Supreme Court; one by *M. D.* and the present plaintiff, and the other by *A. D.*, in which suits decrees were made declaring the will of *P. D.*, and the agreement of 26th November, 1849, to be fully proved and established and binding on *A. D.* and his heirs and the representatives of *P. D.* It was found on the evidence in the present suit that the agreement of 26th November, 1849, was not fraudulent; that when *A. D.* died the estate belonging to the representatives of *P. D.*, independently of the property set apart, was more than sufficient to meet any claims against the estate of *P. D.*; that the agreement of 26th November, 1849, had, up to the present time, been steadily acted on by the representatives of *P. D.* and by the representatives of *A. D.* until very recently; that *A. B. M.* took the mortgage with notice of the agreement and of the fact that it was being acted on under the decrees of the Supreme Court. *Held*, that the family dwelling-house was not absolutely dedicated by the deed of 26th November, 1849, to the worship of the deities and performance of the ceremonies mentioned therein, and therefore was not inalienable. But the prohibition in the deed of 26th November, 1849, against partition of the family dwelling-house for twenty years after the death of the survivor of *P. D.* and *A. D.*, implied also that there should be no alienation of it for twenty years. Until the end of the twenty years *A. B. M.* was not entitled to possession in any shape. *ANATH NATH DEY v. MACKINTOSH*, [viii 60]

5. — *Mitakshara law — Deed declaring each member entitled to definite share of property.* By a deed of sharaktnama the members of a Hindu family, governed by the Mitakshara law, declared that each of the members was entitled to a definite fractional part of the whole estate. *Held*, that this was not sufficient to constitute a valid partition according to the Hindu law. *Appovier v. Rama Subba Aiyar* (11 Moore's I. A. 75) and *Suraneni Venkata Gopala Narashima Roy v. Suraneni Lakshmi Venkata Roy* distinguished. *IN THE MATTER OF THE PETITION OF PHULJHARI KOORR* — — — — — viii 385

6. — *Ancestral property — Mitakshara law—Share of mother on partition between father and sons.* Upon a partition of ancestral property between a father and his sons during the lifetime of the father, the mother is, under the Mitakshara law, entitled to a share. *MAHABEER PERSAD v. RAMYAD SINGH* — — — — — xii 90

7. — *Partition in father's lifetime—Mitakshara law — Mother's share.* By the Mitakshara law a son may sue during the lifetime of his father for a partition of the ancestral property. On such a partition being made, the mother is entitled to have a share

HINDU LAW, PARTITION—continued.

allotted to her, by way of maintenance or otherwise, equal to a son's share. *LALJEET SINGH v. RAJGOOMAR SINGH* — xii 373

8. — *Mitakshara law—Widow's share.* On partition of the family property by the sons after their father's death, the mother is entitled to share equal to that of a son. If she has before the partition received property from the father either by gift or will, amounting to more than a son's share, she is entitled to nothing more on partition; if she has received less, she is entitled on partition to as much as will make what she has received equal to a son's share. *JODOONATH DEY SIBCAR v. BROJONATH DEY SIBCAR*, xii 385

9. — *Mitakshara law — Minor — Joint family.* Where there was a separate appropriation, as well as a separate holding and enjoyment of distinct shares, it was held sufficient to constitute a legal partition under Mitakshara law, following *Appovier v. Rama Subba Aiyar* (11 Moore's I. A. 75). The fact of one of the members of the family being a minor is not sufficient to render the partition invalid, provided the interests of the minor are properly represented as by a manager appointed under s. 12, Act XL of 1858. Every member of a joint undivided family has a right to demand a partition of his own share. *DEO-WANTI KUNWAR v. DWARKANATH* viii 363 note

10. — *Partition, sufficiency of — Suit for declaration of right by one member of joint family.* Though partition by metes and bounds is not necessary to effect a separation of a joint Hindu family, there must be some unequivocal act or declaration on the part of the family of their intention to be separate. *Held*, that a suit for declaration of his right by one of the members, without stating that he asked for a divided or undivided share, was not a sufficient declaration of such intention. *IN RE PHUL KOERI alias GHINA KOERI*, [viii 388 note

MUKTAKASI DEBI v. UBABATI — xiii 396 note

11. — *Held* on the evidence that there was sufficient evidence that the family had separated. *IN RE NOWLAKHU KUNWARI*, [viii 389 note

IN RE SAMANDRA KUNWAR — viii 390 note

IN RE PURNAMASI DAYI — — — — — viii 395 note

12. — *Partition — Construction of deed.* In all cases of division of joint property, not carried out by a partition by metes and bounds, the question whether the status of the family has been thereby altered is a question of intention of the parties, to be inferred from the instruments which they have executed and the acts which they have done to effect such division. An *ikrarnama*, which did not recite a previous status of indivision, and did not in terms declare that the parties thereto should thenceforth be an undivided family, was construed, nevertheless, to mean that the parties would thenceforth hold and enjoy the property, which was the subject of it, in severalty. *DOORGA PERSAD v. KUNDUN KOOWAR*, [xiii P. C. 235

HINDU LAW, PRESUMPTION OF DEATH — Disappearance.] Where a Hindu disappears, and is not heard of for a length of time, no person can succeed to his property as heir until the expiry of twelve years from the date on which he was last heard of. *JANMAJAY MAZUMDAR v. KESHAB LALL GHOSE*,

[ii A. C. 134

2. — *Disappearance.*] The rule of English law, that a period of seven years' absence without tidings is sufficient to raise a presumption of death, cannot be applied in the case of a Hindu. The Hindu law has a rule of its own, requiring the lapse of twelve years before an absent person of whom nothing has been heard can be presumed to be dead. *SABODASUNDARI DEBI v. GOBIND MANI DEBI*,

[ii A. C. 157 note

HINDU LAW, REVERSIONER — Assignee of — Suit by assignee—Widow's estate.] During the existence of a Hindu widow's interest in an estate inasmuch as she has in her the whole estate of inheritance, the assignee of a reversionary heir to her husband has no interest therein as such assignee, which will enable him to bring a suit to have a mortgage and decree affecting the estate set aside. This is so even though the assignee is the next heir to the property after the assignor. *RAICHARAN PAL v. PYARI MANI DAS* — — — iii O. C. 70

HINDU LAW, STRIDHAN — Daughters, betrothed and unbetrothed.] A betrothed daughter is not entitled at her mother's death to share in her stridhan, but the unbetrothed daughters alone inherit with the sons. When stridhan has once devolved as such upon an heir, it does not continue to devolve as stridhan, but afterwards devolves according to the ordinary rules of Hindu law. *SRINATH GANGOPADHYA v. SARBAMANGALA DEBI* — — — ii A. C. 144

2. — *Inheritance—Mother.*] According to the Hindu law as current in Bengal, the mother succeeds to the property of her daughter bequeathed to her by her father before her marriage in preference to her husband. Such property falls within the category of stridhan. *JUDONATH SINGAR v. BUSSUNT COOMAR ROY CHOWDHRY* — — — — — xi 286

3. — Under the Mitakshara law the estate which a daughter takes in property inherited by her from her father is only a qualified estate, and on her death such property descends to the heirs of her father, and not to her own heirs. *CHOTAY LOLL v. CHUNNOO LALL* — — — — — xiv 235

See also *DEO PERSHAD v. LUJOO ROY*,

[xiv 245 note

4. — *Gift by father to daughter—Mesne profits—Inheritance.]* A Hindu by a deed dated in 1840 gave his daughter, a childless widow, an estate for life in certain property, with remainder on her death to his brother's grandsons; the daughter was put in possession, was dispossessed in 1858, and died in 1862. Under the terms of the deed, the property then went to the survivor of the two grandsons, who in 1864 sold his rights and interests in the pro-

HINDU LAW, STRIDHAN—continued.

perty. In 1865 the purchaser brought a suit and recovered possession from the defendants. His representatives now sued for mesne profits of the property from 1860 to 1865. *Held*, that the plaintiffs were not entitled to mesne profits which had accrued due, but were uncollected in, the life-time of the daughter; that such mesne profits would go to her heirs, who would alone be entitled to them. *GURU PRASAD ROY v. NAFAR DAS ROY* — — — — — iii A. C. 121

HINDU LAW, USURY — Rate of interest — Act XXVIII of 1855.] Act XXVIII of 1855 did not repeal the Hindu laws as to the rate of interest. Such rate is governed by the strict rules of Hindu law, as originally laid down by Menu and other lawgivers. *RAMLAL MOOKERJEE v. HARAN CHANDRA DHUR*,

[iii O. C. 130

HINDU LAW, WIDOW.

See **HINDU LAW, ALIENATION.**

HINDU LAW, FAMILY DWELLING-HOUSE.

HINDU LAW, REVERSIONER.

LIMITATION REG. III OF 1793.

LIMITATION ACT XIV OF 1859,
S. 1, CL. 12.

2. — *Remarriage of—Act XV of 1856, ss. 2, 3, 5 — Inheritance.]* A Hindu died leaving a widow and minor son and daughter. The widow remarried after her husband's estate had vested in her son. The son subsequently died; and his step-brother took possession of the property. The widow then brought a suit against the step-brother for possession. *Held*, that the suit was maintainable, and that she could properly succeed as heir to her son, notwithstanding her second marriage. *AKORA SUTH v. BOREANI*,

[ii A. C. 199

3. — *Unchastity — Adoption.]* A Hindu widow, who has become unchaste, is living in concubinage and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption. *SAYAMLALL DUTT v. SAUDAMINI DAS* — — — v 362

4. — *Unchastity — Divesting of property — Forfeiture of inheritance.]* Unchastity in a Hindu widow does not divest her of property which has become vested in her after the death of her husband. *ABHIRAM DOS v. SREERAM DOS* — — — — — iii A. C. 421

5. — *Act XXI of 1850.]* A Hindu widow, in whom the property of her husband has once vested, does not forfeit by her unchastity her right to such property. *Semble.* — Unchastity, followed by degradation or expulsion from caste, would not be sufficient to deprive a widow of an estate which she has taken by inheritance. *MATANGINI DEBI v. JAYKALI DEBI* — — — — — v 466

6. — *Widow's estate, forfeiture of—Unchastity during widowhood.]* *Held* (KEMP, GLOVER, and MITTER, JJ., dissenting), under the Hindu law as administered in the Bengal school, a widow, who has once inherited the estate of her husband, is not liable to forfeit

HINDU LAW, WIDOW—continued.

that estate by reason of her subsequent unchastity. *Per* KEMP, GLOVER, and MITTER, JJ., *contra*. **KERY KOLITANY v. MONE-
RAM KOLITA** - - - - - xiii F. B. 1

7. — *Widow—Power of, to compromise.*] A Hindu widow, as representative of the entire estate in litigation, has the same control with respect to compromise as she has with respect to the assertion of rights and with respect to appeal against an adverse decision. **TARINI CHABAN GANGULI v. WATSON** - - - - - iii A. C. 437

8. — *Widow—Estate of, as heiress of her son—Estate given to be held in severalty absolutely.*] *M.*, a member of a joint Hindu family, died, leaving three sons, *K.*, *G.*, and *D.*, and a widow, *R.*, who was mother of *G.* and *D.* *G.* having died, *R.*, claiming as mother and heiress of *G.*, joined with *D.* in bringing a suit for partition against *K.* and the other members of the joint family. The decree in the suit, which was made by consent of all parties, declared *R.* and *D.* entitled to two equal twelfth parts of the joint estate, and *K.* to one-twelfth share, and referred it to certain persons as arbitrators, and not as commissioners only, to make the award. The arbitrators allotted certain land to *R.* and *D.* as their two-twelfths of the joint immoveable property, "to be held by them in severalty absolutely," to *K.* they allotted other land as his one-twelfth share; and in pursuance of an arrangement come to between *K.* and *R.* and *D.*, they directed *K.* to sell and convey his one-twelfth share to *R.* and *D.*, on receiving from them the sum at which it was valued. *R.* and *D.* paid the money, and *K.* conveyed his share to them by a Bengali bill of sale, in which, after stating that he conveyed it in accordance with the award, he added:—"Becoming from this day invested with my rights, you have become proprietors of the right of gift and sale. I have no further connexion with the said land. Paying the taxes, revenue, &c., to Government, and causing mutation of names, you will continue, with your sons and grandsons in succession, to enjoy possession in perfect peace." In a suit brought by *K.* against the executor of *R.*, to recover a moiety of the property awarded to her and *D.*, and of the property conveyed to them by the bill of sale, upon an allegation that *R.* took this property only as mother and heiress of *G.*, and that, upon her death, it devolved upon him as *G.*'s next of kin—*held* (reversing the decision of **MACPHERSON, J.**), that *R.* took an absolute estate, and not merely a life-interest, both in the property awarded to her and in the property conveyed by the bill of sale. **BOLYE CHUND DUTT v. KHETTERPAL BYSACK** xi 459

9. — *Maintenance of widow—Charge on estate of husband.*] A Hindu died, leaving two sons, *S.* and *M.*, who became separate in estate. *S.* died, leaving a son, *K.*, who became a lunatic. *M.* died leaving a widow, *N.*, and two sons, *B.* and *C.*; and on his death,

HINDU LAW, WIDOW—continued.

his sons *B.* and *C.* took possession of their father's estate, and entered into an agreement with their mother *N.* to pay her Rs. 200 per annum for maintenance, and hypothecated some villages as security for due payment. *B.* died, and *C.* remained in exclusive possession of the property. After the death of *C.*, his widows, *R.* and *D.*, and afterwards *D.* alone, took possession of the estate. *N.* sued *D.* for arrears of maintenance accrued since the death of *C.*, and obtained a decree. In execution of that decree, she attached the rights and interests of *D.* in certain properties, but she died before any sale took place. The plaintiff, the son of *K.*, then obtained a certificate under Act XXVII of 1860 as representative of *N.* He was appointed a guardian of *K.*, who was, in a suit brought by him before his insanity and before the death of *N.*, declared, by a decree made in 1848, entitled to the estate of *C.* as reversioner. The plaintiff executed the decree obtained by *N.*, and caused the properties, which had been before attached, to be sold in 1866. Some time after *D.* died, and the plaintiff then sued the purchaser to recover possession of the property as the representative of his father under the decree of 1848, but was defeated on the ground set up by the defendants, the purchasers, that his father was no longer heir to *C.*, by reason of supervenient insanity when the succession opened out to him on the death of *N.* The plaintiff then brought this suit to establish his own title to the property as heir of *C.* It was contended by the defendants, among other things, that, by the sale in execution in 1866, under the decree obtained by *N.* against *D.*, the absolute proprietary title passed, and not the life-interest of the widow only. *Held*, that the arrears of maintenance for which the sale in 1866 took place was the personal debt of *D.*, and that nothing but her life-interest passed under the sale. **BEJBHOOKUN LALL AWUSTEE v. MAHADEO DOBBEY**,

[xv 145 note

10. — *Sale for arrears of rent—Decree against widow in representative capacity—Purchaser, rights of.*] *A.* sued, under Act X of 1859, the widow of *Z.*, as widow of *Z.* and guardian of *Z.*'s son, for arrears of rent due by *Z.* He obtained a decree in 1862 against the widow as *Z.*'s representative, but it was declared that *Z.*'s son was not liable on the ground that he had been adopted into another family. In a regular suit, *A.* obtained a decree declaring *Z.*'s son to be the heir of his natural father *Z.* Certain estates of the deceased were then, in 1867, put up for sale under Act XI of 1859, in execution of *A.*'s decree for rent, and *A.* became the purchaser. The certificate stated that the sale was of the right and interest of the widow, and that it took place under the decree in the regular suit. *B.*, the holder of a prior decree for rent against *Z.*, having failed to obtain execution against the same property, then sued *A.* and *Z.*'s son for a declaration that he was entitled to sell the

HINDU LAW, WIDOW—continued.

property on the ground that it had come to Z.'s son as Z.'s heir, and that only the interest of the widow (who had no interest) had been purchased by A. *Held* (reversing the decision of the High Court) A. was entitled to the property. The case of *Ishan Chunder Mitter v. Buhsh Ali Soudagur* (Marsh. 614) approved of. COURT OF WARDS v. MAHARAJAH COOMAR RAMAPUT SINGH - - - x P. C. 294

11. — *Sale for arrears of rent — Personal decree against widow — Rent accruing after husband's death.*] In execution of a decree in a suit under the provisions of Reg. VIII of 1831 against a Hindu widow for arrears of rent of a certain talook, the interest of the widow in another talook was sold in 1852 under Act IV of 1846; and in execution of another decree on a bond given by the widow for arrears of rent, a third talook was sold in 1865. Both decrees were for arrears of rent which had accrued due after the death of the husband; and the suits were brought against the widow alone, the reversioner not being made a party. In a suit by the purchaser of the talooks from the reversioner against the purchasers at the execution sales to recover possession of the talooks, *held*, that the plaintiff was entitled to recover. The decrees for arrears of rent were a personal debt of the widow, and not a debt against the estate of the deceased husband. Such decrees can be enforced by the sale of her interest only, except where the proceeding is one which authorizes the sale of the tenures under Beng. Act VIII of 1869. Even assuming them to be a charge on the husband's estate, the onus was on the defendants to prove that such charge was created by legal necessity, which they had failed to do. MOHIMA CHUNDER ROY CHOWDHRY v. RAM KISHORE ACHARJEE CHOWDHRY - - - xv 142

12. — *Arrears of rent due to a zemindar by a Hindu widow in possession of her husband's property are not a personal debt of the widow, and on a sale of the property taking place in execution of a decree against the widow for such arrears, in a suit under Act X of 1859, the purchaser acquires the property absolutely and not merely the rights of the widow.* TELUCK CHUNDER CHUCKERBUTTY v. MUDDON MOHUN BRAHMIN JOOGEE - - - xv 143 note

HINDU LAW, WILL.

See PROBATE.

2. — *Proof of will.*] A., a Hindu, died, leaving two grandsons, B. and C., to whom his estate descended. They were joint in food, worship, and estate. The property was wholly situate in Bengal, and the family, who originally came from the Western Provinces, had long been resident there. C. died, leaving his widow D. and his brother B. surviving him. B., who was manager, died 2½ years after C. After B.'s death D. brought her suit to establish her right as widow of C. to a moiety of the family property. The representatives of B. set up an instrument, which they alleged to be the will of C., where-

HINDU LAW, WILL—continued.

by he bequeathed his share to B., reserving the maintenance to D. The Judge of the Zillah Court of Nuddea held that the alleged will of C. was genuine, and dismissed D.'s suit. The High Court, on appeal, held (1) that D. ought firstly to have shown her title to sue, i. e., having admitted that the family came from Mithila, she ought to have shown that they were no longer governed by the Mitakshara law; (2) that for several generations the rule of inheritance had been according to the Dayabhaga; (3) that the alleged will was not proved (there was evidence before the Court of the *factum* of the will adequate to the proof of an ordinary will, but the Court held that this evidence was outweighed by the internal improbabilities); (4) that if the rule of inheritance was not according to the Dayabhaga the will was inofficious. On appeal to the Privy Council, — *held*, first, it would be a rash conclusion on the state of the evidence in the case to suppose a preference of the law of Bengal likely to be operative on the mind of the testator; and therefore there was no foundation for treating the will as inofficious. Second, it was not necessary to decide whether the rule of inheritance was according to the Dayabhaga or the Mitakshara. Third, the evidence was adequate to the proof of an ordinary will, and there was no internal improbability of the will sufficient to discredit it. SURENDRA NATH ROY v. HIRAMANI BARMANI - - - - - i P. C. 26

3. — *Proof of execution of will—Hand-writing.*] By will dated in 1837, a testator directed his property to be held in a particular way, and gave his widow power to adopt. In 1848, she adopted a son under the will, with the knowledge of the members of the family, and the will was for a period of twenty-seven years generally recognized and acted on by the testator's family. The Judicial Committee held (reversing the decree of the High Court), in accordance with the finding of the Principal Sudder Ameen, that the will was proved. Where a will was executed by the testator signing with the Bengali letter "M," and it was argued that the testator being in very weak health, the firm way in which the "M" was written threw discredit upon it, the Judicial Committee preferred the decision of the native Judge on this point to that of the English Judges of the High Court, and expressed doubt as to the value of the style of such writing as evidence in favour of the will being forged. RAJENDRA NATH HALDAR v. JAGENDRA NATH HALDAR - - - vii P. C. 216

4. — *Bequest to idol — Appointment of sebaite.*] A testator by will left certain property to an idol and appointed a sebaite. The person so appointed died without taking charge of the property or filling the office, and the lands remained in the possession of the testator's family. *Held*, that this property would follow the course of the other properties left by the testator, and be divided with them among the devisees

HINDU LAW, WILL—continued.

under the will. **SABODA SUNDARI DEBI v. GOBINDMANI DEBI** - - - ii A. O. 137 note

5. — *Omission or refusal to adopt—Widow with authority to adopt*] A Hindu will contained the following clause: "I give out of my two annas share of the whole of my personal estates Rs. 7,000 to my mother (one of the defendants), and Rs. 5,000 to my wife (the plaintiff). Besides the two-anna share of the wealth in ready-money and landed property which remains, you my brother will keep under your own charge; you are at present malik of the whole of the property; as master and manager of the entire property, you will perform all acts; you will cause one of your sons to be received in adoption." The brother died leaving a will, by which he committed to his wife and mother the charge of his own property and that of his brother, and also the duty of giving his son in adoption to his brother. The defendants, *viz.*, his wife and mother, proved the will, and took possession of the property. The plaintiff omitted to adopt. Her husband died in 1851, and the suit was brought in 1867. *Held*, that the plaintiff, notwithstanding her omission to adopt, succeeded to her husband's estate for a Hindu widow's interest therein. *Held by* PEACOCK, C. J., and MARKBY, J., that the estate descended to the widow, plaintiff, subject to the two legacies; and that she did not forfeit it even if she refused to adopt. **PRASANAMAYI DAS v. KADAMBINI DAS** - - - iii O. C. 85

6. — *Construction of will — Power to adopt—Double adoption.*] A Hindu testator died, leaving a widow, and leaving also a will, which contained the following clause: "My wife is supposed to be pregnant with child; if a daughter be born she will in that case adopt the twain mentioned below (the plaintiff and one S. G.; and whatever property there shall exist, consisting of moveable and immoveable, my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority. S. G. died; no child was borne by the widow. The plaintiff having attained his majority brought a suit for declaration of his title, alleging that he had been duly adopted under the will; but that, whether he had been adopted or not, he was entitled under the will to a share in the moveable and immoveable property of the testator. No valid adoption took place. *Held*, that there was no gift by implication to the plaintiff. The testator only intended him and S. G. to take under the will in the event of their being adopted. **Prossomonoye Dass v. Dossmoney Dass** (2 I. J. N. S. 18) not followed. **ABHAI CHARAN GHOSE v. DASMANI DAS** - - vi 623

7. — *Trusts — Perpetuity.*] A Hindu boy will attempted to create a trust for the accumulation, for 99 years, of the surplus income (after certain yearly payments) of his estate in the purchase of zemindaries, &c., from time to time, and empowered his trustees to continue such trust after the expiration of

HINDU LAW, WILL—continued.

the 99 years' term. The will contained no disposition of the beneficial interest in the zemindary so to be purchased. *Held* that such trust was void. *Seemle.*—Perpetuity (save in the case of religious and charitable endowments) is not sanctioned by Hindu law. **KUMARA ASIMA KRISHNA DEB v. KUMARA KUMARA KRISHNA DEB** - - - ii O. C. 11

8. — *Construction of will — Perpetuity — Trusts.*] A Hindu by his will left all his property "in full and absolute right, property, and ownership" (nevertheless upon the conditions and trusts, and with the intent and for the purposes thereafter described), to certain persons named, and "to their successors in the trusts of the settlement thereafter provided," declaring the "trusts and objects" of his said will and settlement, and the "methods, plans, and acts" he desired "to be performed and observed" by such persons and their successors in the trusts. He then desired that all his property should be preserved and held for ever under the trusts, and for the purposes of the said will and settlement. In the second, third, and fourth clauses of the will the testator went on to direct the "executors and trustees" to pay to his sons therein named a certain monthly sum, "such payment to be continued after his decease to his children and descendants *per stirpes*." After directing the executors and trustees to make other payments, &c., in the eighteenth clause he directed.—"With respect to accumulations of money in the hands of the executors and trustees, I direct that the same be converted into such Government or other security as to the executors and trustees may seem best, and that the interest and produce of such security be accumulated and in like manner be invested, and that when and so soon as the aggregate thereof shall amount to Rs. 300,000, it is to be transferred to and divided among my sons or the survivors, or survivor, together with the descendants of such of them as may be deceased, *per stirpes*; and as soon as new accumulations arise in the hands of the executors and trustees, that the same be again in like manner divided among my sons then living, or the survivor of their descendants, as before, and so on from time to time. In the twenty-first clause the testator made provision for the appointment of new "executors and trustees," "as it is my intent and desire that the disposition, the conditions, and control I am now devising in regard to the future arrangement and enjoyment of my property be perpetuated." In the Court below, *held per* MARKBY, J., that trusts cannot be created by Hindus, but a testator may burden his heir or devisee with a payment of a simple sum of money to a specified person (including an idol) in existence at the death of the testator. Such bequest cannot be held good as a trust created for the benefit of the legatee, but may be treated as creating an ordinary obligation for the payment of money. On appeal, *held per* PEACOCK, C. J., that trusts have been and can be enforced against Hindus; the trustees in this case take upon such trusts

HINDU LAW, WILL—continued.

as are valid; so far as they are invalid, the heirs are entitled to the beneficial interest. A Hindu cannot by his will do indirectly by intervention of trusts what he cannot do directly. *Per* MACPHERSON, J.—Both by Hindu law and the practice which has always prevailed in the Courts in India and in the Privy Council, a Hindu may legally deal with his property so as to create a trust, or relation in many respects similar to, although not necessarily identical with, that known in English law as the relation of trustee and *cestui que trust*. Even if trusts are not expressly recognized by the old Hindu law, there is nothing in it forbidding them, or repugnant to them, or inconsistent with their existence. *Held*, both in the Court below and on appeal, that the general scheme of the will failed, because the trusts were intended for an illegal purpose, namely, for the purpose of creating a perpetuity. *Per* PEACOCK, C. J.—The 18th clause is repugnant and void, also bad, because the persons to take were unborn at the time of the testator's death, and on the ground of uncertainty, it being impossible to ascertain at the testator's death who would be entitled to participate in the several divisions of accumulation directed to be made. As to the bequests in the second, third, and fourth clauses of the will, *held* in the Court below, *per* MARKEBY, J., that they could only operate in favour of specified persons in existence at the death of the testator. On appeal, *held per* PEACOCK, C. J., that they operated as "gifts to the sons for life, with remainders to such children of the sons as were in existence at the time of the death of the testator *per stirpes*." *Per* MACPHERSON, J.—There was a good gift in remainder to the children of such sons as were alive at the time of the testator's death. It is not a violation of the principles of Hindu law to support estates which are to vest on the expiry of a life in being, in a case like the present, where the testator has given his property to trustees who have accepted it, and are prepared to carry out his wishes. Their acceptance would be sufficient if any is necessary. KRISHNARAMANI DAS v. ANANDA KRISHNA BOSE; ANANDA KRISHNA BOSE v. KUMARA RAJENDRA NARAYAN DEB - - - 14 O. C. 231

9. — Construction of will — Perpetuity — Trusts — Life-estate — Estates-tail — Gifts *inter vivos*—Disinheritance.] P. K. T. died leaving an only son, G. M. By his will, after reciting, "I have already made such provision for my son G. M. as I consider sufficient, and he will take nothing whatever under this my will," he devised and bequeathed all his property, both real and personal, unto and to the use of R. N., U. M., J. M., and D. P. M. (thereafter called the trustees), their heirs, executors, &c., according to the nature and tenure of the property to have and to hold upon the trusts thereafter declared, that is to say, as regards personalty, upon trust to collect and get in the same and thereout to pay his funeral expenses and debts and such

HINDU LAW, WILL—continued.

legacies as might be payable in the ordinary course of administration within one year from the testator's death; after paying the funeral expenses, debts, and legacies upon trust, to sell and convert into money such portion of the personal estate as should remain unexpended, and not consist of money or security for money, and to vest the proceeds on good securities; and out of the annual income of the whole upon trust to pay the annuities given by the will and also any of the legacies so far as it would suffice, and after payment of the legacies and annuities to pay the surplus unexpended unto the person or persons for the time being entitled to the beneficial enjoyment of the real property, or of the rents and profits or surplus rents and profits thereof; and so soon as all the annuities and legacies should have fallen in and been fully paid and satisfied, in trust absolutely for the person or persons entitled to the beneficial or absolute enjoyment of the real property. As regard realty upon trust, until all the debts and legacies had been paid and all the annuities had fallen in and been fully satisfied, to receive and collect the rents, issues, and profits thereof, and thereout in the first instance to pay such (if any) of the legacies and annuities as the personal estate or income derived from the trust money and securities should be inadequate to defray, and to pay the residue to the person or persons for the time being to whom the real estate is devised, for the absolute use of such person or persons respectively. The testator then desired the trustees to hold the real estate generally for the use and benefit of such last mentioned person or persons for the time being, so far as was consistent with the trusts and provisions of the will; and further he directed that out of the net annual income the person entitled to the beneficial enjoyment of the real property or of the income or surplus income thereof should receive for his own use every year, Rs. 2,500 a month or Rs. 30,000 a year, and that the various legacies and annuities should only be paid gradually and as found possible by the trustees out of the balance remaining out of the last mentioned payment; and so soon as all the legacies and annuities had fallen in or been paid or fully satisfied, then in trust forthwith to convey the real estate unto and to the use of the person entitled to the beneficial interest therein with and subject to such and the like limitations, provisions, and directions thereafter contained and expressed of and concerning "the real estate," so far as the then condition of circumstances will permit and so far as such limitations and directions can be introduced into any deed of conveyance or settlement without infringing upon or violating any law against perpetuities which may then be in force and apply to the real estate or the conveyance or settlement of it as last aforesaid (if any such law there be). The testator then desired that all the gifts, devises, and limitations in his will thereafter contained should be read and taken as subject to the devise and

HINDU LAW, WILL—continued.

bequest thereinbefore made to the trustees and the various provisions and declarations made by him with reference thereto. The testator devised all his real property (subject to the before-mentioned devise to the trustees) unto and to the use of *J. M.* for the term of his natural life, and from and after the determination of that estate, to the use of the eldest son of *J. M.* born during the testator's life for the life of such eldest son; and after the determination of that estate, to the use of the first and other sons successively of the eldest son of *J. M.* according to their respective seniorities, and the heirs male of their respective bodies issuing successively; and upon the failure or determination of that estate, to the use of the second and other sons of *J. M.*, born during the testator's life, successively according to their respective seniorities; and upon the failure or determination of that estate, to the use of the first and other sons successively of such second or other sons of *J. M.*; and the heirs male of their respective bodies issuing, so that the elder of the sons of *J. M.* born in the testator's life-time, and his first and other sons successively, and the heirs male of their respective bodies issuing, may be preferred to and taken before the younger of the sons of *J. M.* born in the testator's life-time, and his and their respective first and other sons successively, and the heirs male of their respective bodies issuing. And after the failure or determination of the uses and estates thereinbefore limited, to the use of each of the sons of *J. M.* who should be born after the testator's death successively according to their respective seniorities, and the heirs male of their respective bodies issuing, so that the elder of such sons and the heirs male of his body may be preferred to and taken before the younger of such sons and the heirs male of their and his respective bodies issuing. On failure of these estates, there were similar limitations to other members of the testator's family and their sons, sons' sons, &c. Further, the testator declared his will and intention to be "to settle and dispose of the estate in manner aforesaid as fully and completely as a Hindu born and resident in Bengal may give or control the inheritance of his estate, or a Hindu purchaser may regulate the conveyance or descent of property purchased or acquired by him, and not subject to any law or custom of England, whereby an entail may be barred, affected, or destroyed; provided always, and I hereby declare, that if any devisee or tenant-for-life, or in tail or otherwise, or any person entitled to take as heir by descent or adoption or otherwise in any manner, under the limitations hereinbefore contained, shall permit or suffer the property so devised, &c., to be sold for arrears of Government revenue, &c., then and immediately thereupon the devise and limitations in this my will declared and contained shall wholly cease and determine as to him," &c. Finally, he appointed the trustees executors of his will. *J. M.* had no son born during the life of the testator. *G. M.*, the son

HINDU LAW, WILL—continued.

of the testator, sued to have the will set aside except as regards the payment of debts, legacies, and annuities. He also charged the executors with waste, and asked for an account. *Held*, both in the Court below and on appeal, that the devises were not void, merely upon the ground that the estates were devised upon trust, and that the testator had power to create by means of a devise to trustees such estates and beneficial interests as he could have created without the intervention of trustees. But the entails intended to be created by the will were void, estates-tail being wholly opposed to the general principles of Hindu law. The plaintiff could not claim maintenance, sufficient provision having been previously made for him by his father. *Held*, in the Court below, that although the testator could not create an estate-tail, yet as it is clear that he intended to dispose of the whole inheritance, the devise must be construed as amounting to the creation of several successive life-interests, each commencing on the termination or the failure of the preceding, the whole completed by the gift of the entire estate of inheritance to take effect on the expiration of the last life-interest. The first series of such devises is not bad for remoteness, for there is nothing in Hindu law to prevent a testator from making a gift of property to an unborn person, provided the gift is limited to take effect, if at all, immediately on the close of a life in being; therefore as concerns only the succession of gifts for life only to *J. M.* and his sons, terminated by the absolute gift of the inheritance to an unborn person, the will is unimpeachable, because each of these gifts must take effect, if at all, at or before the close of a life in being; and the like conclusion would hold with regard to each of the other series of devises taken alone; but taken in the aggregate they may violate the rule against perpetuities; but the first series could not be affected by this, and therefore as long as it stands the plaintiff has no claim to a decision of the Court upon the validity of a devise which is subsequent in order of time. The plaintiff's suit must be dismissed. He is not entitled to immediate relief of any kind. *Held* on appeal, that the devise to *J. M.* was valid, though it created only a life estate. The intention of the testator was that *J. M.* should take an immediate vested beneficial interest in the real estate, subject to the charges for payment of legacies, annuities, &c., and in the Rs. 2,500 a month. The devise to *J. M.* was not bad for uncertainty. But the devises of estates-tail must be rejected as void, and cannot be converted by the Court into devises creating larger estates than the testator intended. The words of the devise cannot be construed to pass a general and absolute estate. As *J. M.* had no sons born in the life-time of the testator, the devise to the use of the first and other sons successively of the eldest son of *J. M.* lapsed. By Hindu law a gift cannot operate to pass property unless the donee is in existence, so that as soon as the property is

HINDU LAW, WILL—continued.

relinquished, and passes out of the donor, it may vest in the donee. That in the case of a will would be at the time of the death of the testator, from which moment the will operates as a relinquishment (except in the case of a posthumous child of the testator or a son adopted by the widow of a testator). Therefore the devise to the sons of *J. M.* to be born or adopted after the death of the testator are not valid according to Hindu law. The gift to trustees does not cure the invalidity, for the law will not permit that to be done indirectly which cannot be lawfully done directly. The gift of the personalty fails because of the want of certainty at the time of the death of the testator, who would be the donee, and whether the donee was a person in existence or not. The gift over of the *corpus* of the personalty after the payment of the legacies and annuities was bad, and consequently the property in it is vested in the son and heir of the testator subsequently to the trusts for the payment of debts, legacies, and annuities, &c. But the right to receive the surplus rents and profits of the real estate and of the interest and dividends of the personalty, if there be any, is vested in *J. M.* for life, or until the time arrives for the conveying of the real estates, and the vesting of the *corpus* of the personalty. The heir-at-law cannot be disinherited by words expressing that he is not to take any benefit under the will. He will take by descent, by his right of inheritance, whatever is not validly disposed of by the will. Subject to the trusts for payment of the funeral and testamentary expenses and of the debts, legacies, and annuities, the plaintiff, as the heir-at-law of the testator, is entitled (notwithstanding the will) to a general estate of inheritance in reversion to the immoveable property of the testator, and by the terms of the will no estate larger than an estate for life has been validly created, and there is a resulting trust in the plaintiff's favour. The plaintiff is not entitled to a declaratory decree against the unborn sons of *J. M.* or the subsequent unborn devisees. The plaintiff is entitled to have the question of waste tried. He is also entitled to have an account of the moneys and securities which have come into the hands of the trustees, and to see how they have been applied. *Per NORMAN, J.*—The power of a Hindu to make a will is not of modern introduction, nor is it of local origin. Wills were known to and in use amongst Hindus not in the presidency towns only, but from one end of the peninsula to the other. The right to make a will is part of the Hindu law itself. The extent and nature of the disposition which a Hindu testator is capable of making is not a question of public expediency or of custom or usage, but must be regulated by rules to be found in, or directly deduced from, Hindu law. **GANENDRA MOHAN TAGORE v. UPENDRA MOHAN TAGORE,** [iv O. C. 103]

10. — *Deeds of Gift — Construction, rules for—Maintenance of Son's trust — Life-*

HINDU LAW, WILL—continued.

estates — Estates tail.] In construing transfers by gift among Hindus, a benignant construction is to be used, and the donor's intentions carried out, if ascertainable, to the extent and in the form which the law allows. Thus, if an estate be given by a Hindu to *A.* without words of inheritance, it will, in the absence of a conflicting context, give an estate inheritable as the law directs; if to it be added an imperfect description of it as a gift of inheritance not excluding the inheritance imposed by law, an estate of inheritance would pass; if a gift be in terms of an estate inheritable according to law, with superadded words restricting the power of transfer which the law annexes to that estate, the restriction is to be rejected; if a gift be to *A.* and his heirs to be elected from a line other than that specified by law, and expressly excluding the legal course of inheritance, the gift is only good so far as consistent with the law—*A.* would take a life-estate, and the other limitations would fail. All estates of inheritance created by gift or will so far as they are inconsistent with the general law of inheritance, are void as such, and by Hindu law no person can succeed as heir to estate described in terms which in English law would designate estates-tail. In order to make a gift under a will good by Hindu law, the donee, except in the case of an adopted child, or a child *en ventre sa mere*, must be a person in existence capable of taking at the time when the gift takes effect. A child adopted after a man's death in pursuance of a power given by him, is in contemplation of law begotten by that man. The law of wills among Hindus is analogous to the law of gifts; and even if wills are not universally to be regarded in all respects as gifts to take effect upon death, they are generally so to be regarded as to the property which they can transfer, and the persons to whom it can be transferred. A person capable of taking under a will must be such a person as could take a gift *inter vivos*, and, therefore, must, either in fact or in contemplation of law, be in existence at the death of the testator: *Soorjemonny Dosses v. Denobundoo Mullick* (9 Moore's I. A. 123) distinguished. Trusts are not unknown to Hindu law; they can be created for carrying out such intentions as the law recognizes. There is no reason why a Hindu should not by will create an estate for life. Where the testator left his property to *A.* for life with remainders, showing that *A.* should have no more than a life-estate, but that the testator wished to tie up the estate by provisions in tail, *held, A.* could not be declared entitled to more than a life-estate. Where a testator directed his property to go in a certain way on the "failure or determination" of estates created by him, it was held that such words contemplated the fact of those estates being legal and valid; and that as they were illegal and invalid, no effect could be given to the directions as to the further devolution of the property. The will directed that, as to the personalty, the trustees

HINDU LAW, WILL—continued.

were, after all annuities and legacies had fallen in and been satisfied, to stand possessed of, and interested in, the *corpus* in trust absolutely for the person or persons entitled under the limitations in the will to the beneficial or absolute enjoyment of the real property. The High Court gave the tenant for life the surplus of the interest remaining in the hands of the trustees after payment of the legacies and annuities, but excludcd him from any right to the subsequently accruing interest. *Held*, that he was entitled to the interest of the personalty after such falling-in and satisfaction. Where a son had received as a gift from his father property producing at the time Rs. 7,000 a year, their Lordships, without deciding whether a son could be deprived of maintenance, considered that he had received an adequate maintenance. All the existing parties interested in a will being before the Court, a decree can be made as to the rights of all parties. *Lady Langdale v. Briggs* distinguished. **JOTINDRA MOHAN TAGORE v. GANENDRA MOHAN TAGORE**; **GANENDRA MOHAN TAGORE v. JOTINDRA MOHAN TAGORE** - - - ix P. C. 377

11. — *Will, construction of—Bequest void for remoteness.*] A Hindu testator died possessed of considerable property, and leaving a will dated 12th September, 1870, by which he appointed his wife executrix in the following words:—"I appoint my wife, A. D., executrix on my behalf, and vest her with entire authority and responsibility. After my decease my said wife shall perform all duties according to my instructions embodied in the following paragraphs: After reciting that his wife was a *purda* woman, and that his three sons were disobedient and extravagant, he appointed certain persons managers to perform certain duties under the will which could not be performed by a *purda* woman: and after various minor bequests and directions, he directed that, if it should appear to the executrix or executors for the time being that they would not be able to protect the property, then they should form a family fund in the Government Trust Fund of all the property, and that the interest thereof should be employed in the performance of certain religious ceremonies and the family expenses, and then bequeathed as follows:—"Whatever Company's paper, moveable and immoveable property, &c., shall be formed into a family fund in the Government Trust Fund, my great grandsons shall, when they attain majority, receive the whole to their satisfaction, and they will divide and take the same in accordance with the Hindu law. God forbid it, but should I have no great grandsons in the male line, then my daughter's sons when they are of age, shall take the said property from the Trust Fund and divide it according to the Hindu shastras in vogue." The testator left living, at the time of his death, one son's son, three sons and a daughter and her sons, but no great grandson. *Held*, that the bequest to the great grandsons was void

HINDU LAW, WILL—continued.

and inoperative for remoteness, that the bequest to the daughter's sons was dependent on, and not alternative to, the gift to the great grandsons, and therefore a bequest void under s. 103 of the Succession Act. *Held* also, that A. D. was invested under the will with only a representative character, and was therefore not entitled beneficially to any residue of the estate as against parties who might have any interest therein. **BRANANATH DEY SIKKAR v. ANANDAMAYI DAS** - - - viii 280

12. — *Will, construction of—Male issue—Gift to unborn person—Bequest void for Remoteness.* Where a testator directed in his will that (1st) "on the death of either of my four sons leaving lawful male issue, such issue shall succeed to the capital or principal of the respective shares of his or their deceased father or fathers, to be paid or transferred to them respectively on attaining the full age of twenty-one years; (2nd), if either of my four sons shall die leaving male issue and the whole of such issue shall afterwards die under the age of 21 years and without male issue, the share or shares of the sons so dying shall go and belong to the survivors of my said sons and to my two grandsons (named in the will) for life and their respective male issue absolutely after their death; and (3rd.), on the death of either of my sons without leaving any male issue his share is to go and belong to the survivors of my said sons and my two grandsons (named in the will) for life, and their respective male issue absolutely after their death in the same manner and proportions as hereinbefore described respecting their original shares. It was *held*: 1st.—That a vested interest was conferred upon the issue immediately upon the death of the father. The expression "to be paid or transferred to them respectively on attaining the age of twenty-one years" was a mere attempt to defer the period of payment to, or enjoyment by, such issue. 2nd.—That the gift over was void, because the event on which it was to take effect might be indefinitely remote, even if the words "male issue" be construed as meaning sons. The meaning of "male issue" is not confined to sons alone. 3rd.—That in accordance with the ruling in *Ganendra Mohan Tagore v. Upendra Mohan Tagore*, a gift by a Hindu to a person not ascertained or capable of being ascertained at the time of the death of the testator cannot take effect; therefore the gift to the unborn male issue of the sons and grandsons of the testator must fail. Where there is a gift to a class, and some persons constituting such class cannot take in consequence of the remoteness of the gift or otherwise, the whole bequest must fail. *Held* also, in accordance with *Ganendra Mohan Tagore v. Upendra Mohan Tagore*, that a Hindu cannot, under any circumstances, make a gift by will to an unborn person or persons. **BRAMAMAYI DAS v. JAGES CHANDRA DUTT**. - - - viii 400

13. — *Will, construction of—Gift absolute to widow—Discretion.*] A Hindu died, leav-

HINDU LAW, WILL—continued.

ing a widow, two infant sons, and a daughter, and having made a will in English, of which the following is the material portion:—I give, devise, and bequeath unto my wife *L. D.* and her heirs and assigns for ever, all my real and personal estates and effects, and do appoint my said wife sole executrix of this my will." *Held* (reversing the decision of *MACPHERSON, J.*) that the wife took an absolute estate with full power of alienating the property, and not merely as trustee and manager for the infant sons. It is not necessary that there should be an express declaration of the testator's desire or intention to disinherit his sons if there is an actual gift to some other persons expressed in clear and unequivocal words. *PROSUNNO COOMAR GHOSE v. TARRUCKNATH SIRKAR*, [x 267]

But see *ROOPLAL KHETTRY v. MOHIMA CHURN ROY* - - - - E 271 note

HINDU WILLS ACT.

See *PROBATE*.

HOLIDAY—Admission of plaint.] The reception of a plaint for arrears of rent by the Collector on Good Friday, although by the Circular Order of the Board of Revenue such day is an authorized holiday, is not illegal. *GOBIND KUMAR CHOWDHRY v. HARGOPAL NAG*, [iii Ap. 72]

2. — *Trial on Sunday—Fining witnesses for non-attendance—Penal Code, s. 174.]* When a magistrate while travelling in his district tried a case partly at one place and then fixed Sunday at noon for the further trial of the case at another place, and the witnesses came three hours late and the Magistrate having then gone on they were subsequently sentenced by him under s. 174 of the Penal Code for being intentionally absent. *Held*, that the proceeding was irregular. The Magistrate was wrong in fixing Sunday for the trial of the case, and the witnesses might, on the ground that it was a recognized holiday, have refused to attend. *QUEEN v. HARGOBIND DATTA SIRKAR*, [viii Ap. 12]

HOLIDAY, TIME EXPIRING ON.

See *LIMITATION. REVIEW.*

HOSPITAL. BEQUEST TO.

See *WILL.*

HOUSEBREAKING.

See *PRIVATE DEFENCE, RIGHT OF.*

HUNDI—Suit to recover hundi—Forged endorsement—Bonā fide holder for valuable consideration.] A hundi which had been purchased by the plaintiff at Delhi for value was, he alleged, endorsed by him to the firm of *R. B. D.* of Calcutta, "for realization," and sent to that firm by post. Between Delhi and Calcutta the hundi was lost or stolen, and never reached the firm of *R. B. D.* It eventually came into the hands of the defendant, bearing no endorsement to *R. B. D.*, but endorsed to *U. D. H.*, and by *U. D. H.* The defendant alleged that he took it in the ordi-

HUNDI—continued.

nary course of business, and for valuable consideration, from the gomastah of the firm of *U. D. H.*, after the acceptors to whom it had been sent for that purpose had acknowledged their acceptance in favor of the firm of *U. D. H.*, of Calcutta, by whom it purported to be endorsed to the defendant's firm. When presented to the acceptors for payment it was dishonored, the acceptors stating that they had received notice not to pay the note, as it had been stolen. On the same day the defendant gave notice of dishonor to the firm of *U. D. H.*, and demanded payment, but that firm stated that their endorsement to the hundi was forged, and refused to pay. It was proved that before taking the hundi, the defendant had sent to the acceptor's kotī to ascertain if their acceptance was genuine. In a suit for the recovery of the hundi, or its value,—*held* by the Court below that the endorsement of *U. D. H.* was genuine, and that the plaintiff was not entitled to recover the hundi. The defendant having taken the hundi in the ordinary course of business, and after sufficient enquiry was entitled to retain it: this was so notwithstanding the endorsement "for realization" on the hundi. The hundi was one which passed by delivery without endorsement, and therefore if the endorsement of *U. D. H.* was forged, the defendant still had a right to the hundi. On appeal, the Court held that the endorsement to the firm of *U. D. H.* was not genuine, and this being so, the fact that the defendant took the hundi in the course of business, for valuable consideration, and without notice, did not give him a good title to retain it as against the plaintiff. The hundi was specially endorsed and specially accepted, and there was nothing to show that by Hindu law such a hundi would pass as one payable to the holder without endorsement. *THAKUR DAS v. FUTTEH MULL*, [vii 276]

2. — *Suit to recover hundi—Forged endorsement.]* The plaintiffs, being holders of a hundi, sent the same to their kotī in Calcutta without endorsement. The hundi was lost or stolen on the way, and came into the defendants' hands as endorsees, the endorsement of the plaintiffs having been forged. The defendants, without notice of the forgery, paid full consideration for the hundi. *Held*, on appeal, reversing the decision of the Court below, that the plaintiffs were not entitled to recover the hundi from the defendants. *Per* PEACOCK, C. J.—It appeared from the evidence that the hundi in this case would pass, at any rate prior to acceptance, by delivery. *GOURAIMULL v. DHANSUK DAS*, [vii 289 note]

3. — *Duplicate—Cause of action.]* The plaintiff obtained a hundi from a banker, *B.*, at Baluchar, for a certain amount drawn upon the firm of the latter at Calcutta. Afterwards, on her representing to *B.* that she had lost the hundi, *B.* granted the plaintiff a duplicate, in the body of which it was stated that if the original had been accepted before presentation of

HUNDI—continued.

the duplicate the latter was to become null and void. The duplicate was presented to the agent of *B.* at Calcutta, and payment was refused on the ground that the original had been presented and accepted and paid in due time. *Held*, that the plaintiff had no cause of action against *B.* for non-payment of the duplicate hundi, nor for money had and received on account of the original consideration having failed. *INDUR CHANDRA DUGAR v. LACHMI BIBI* - - - - - vii 683

4. — *Property in Hundi sent to agent for realization.*] *S. R.*, the plaintiffs' agents in Calcutta, accepted hundis for Rs. 12,000 drawn upon them by a branch house of the plaintiffs' firm, and the plaintiffs at different times sent to *S. R.* hundis amounting in value to Rs. 11,400, with instructions to realize them, and to apply the proceeds towards payment of the Rs. 12,000. *S. R.* had paid Rs. 7,000 of this amount, and they had realized Rs. 6,400 out of the Rs. 11,400, when they stopped payment. At that time two unmatured hundis, for Rs. 2,500 each, remained in their hands, and these they endorsed over to the defendant after maturity in trust for their creditors. In an action by the plaintiff against the defendant to recover the two hundis—*held*, that the hundis, having been sent to *S. R.* for the special purpose of enabling them to meet their acceptances for Rs. 12,000, remained the property of the plaintiffs subject to a lien of *S. R.* of Rs. 600. *HAZARI MULL NAHATTA v. SOBAGH MULL DUDDHA* - - - - - ix 1

5. — *Principal and agent—Custom—Notice of dishonor.*] The drawers of a hundi in favor of the plaintiff at Dacca (where all the parties to the hundi lived) were held not liable on proof that they were the gomastas of the acceptor, that they had no interest in the hundi, and that, according to custom in Dacca where the hundi was drawn and accepted, agents under such circumstances are not liable, although the agency does not appear on the hundi. They were also held discharged from liability, notice of dishonor not having been served on them till ten months after the due date of the hundi. *HARI MOHAN BYSAK v. KRISHNA MOHAN BYSAK*. [ix Ap. 1]

HUNDI, SUIT ON.

See CAUSE OF ACTION.
PRINCIPAL AND SURETY.

HUSBAND AND WIFE.

See SUCCESSION ACT, s. 4.
WILL.

2. — *Plea of coverture — Separate property of wife — Suit on promissory note — Personal decree.*] The defendant, a married woman living with her husband, both domiciled in British India and resident in Calcutta, where they had been married on 21st May, 1866, and having property to which she was absolutely entitled under the provisions of the Indian Succession Act, signed a promissory note in favour of the plaintiff for a debt

HUSBAND AND WIFE—continued.

due by her to the plaintiff, at the same time giving a verbal promise to pay the amount out of her own property. In a suit on the promissory note, in which the husband and wife were made parties, the wife pleaded her coverture, — *Held* that she was liable to pay the amount of the promissory note out of her own property, and the Court would, if necessary, make a personal decree against her. *ARCHER v. WATKINS* - - - - - viii 372

3. — *Illegitimacy—Right to bastard's estate—Wife's equity to a settlement—Execution of decree.*] *M.*, the widow and administratrix of a bastard who had died intestate and without issue, received a letter in 1841 from the Lord Commissioners of the Treasury stating that they did not deem it expedient to take any steps for the assertion of the rights of the claim with regard to her late husband's estate. Previous to this *M.* had obtained possession of that estate, and two months before the receipt of the letter she had contracted a second marriage. No settlement was made upon the marriage, and since the marriage her second husband had had the management of the property. In execution of a decree against the husband his right, title, and interest in and to a portion of the property were put up for sale, and purchased by the plaintiff. The plaintiff's right to possession was disputed by *M.* who contended that her husband took no interest in the 2-3rds of the property which went to the Crown which could be attached and sold in execution. In a suit by the plaintiff to establish her rights over the property—*held*, that the rights of her husband extended over the whole estate and were rights which could be seized in execution and sold. *M.*'s husband being without property and in great difficulties, and subsisting only on a life-pension of Rs. 118 a month, *M.* was entitled to a settlement. *TOOLSEEMONEY DOSSETT v. CORNELIUS* - - - - - xi 144

HUTS, RIGHT OF TENANT TO REMOVE.

See LANDLORD AND TENANT.

HUTS, SEIZURE OF, IN EXECUTION.

See SMALL CAUSE COURT, MOFUSSIL.
SMALL CAUSE COURT, PRESIDENCY TOWNS.

IDOL, DEDICATION TO.

See HINDU LAW, ENDOWMENT.
HINDU LAW, PARTITION.
HINDU LAW, WILL.

IDOL, JOINT OWNERSHIP IN RIGHT OF WORSHIP OF.

See PARTITION.

IDOL, SUIT FOR TURN OF WORSHIP OF.

See LIMITATION, ACT XIV OF 1859,
s. 1, CL. 16.

ILLEGAL CESS.

See CONTRACT.

ILLEGAL GRATIFICATION.

See PUBLIC SERVANT.

ILLEGITIMACY—*Right to bastard's estate—Escheat—Non-assertion of claim by Crown—Estoppel.*] *M.*, the widow and administratrix of a bastard, who had died intestate and without issue, received a letter in 1841 from the Lords Commissioners of the Treasury stating that they did not deem it expedient to take any steps for the assertion of the rights of the Crown with regard to her late husband's estate. Previous to this *M.* had obtained possession of that estate, and two months before the receipt of the letter she had contracted a second marriage. No settlement was made upon this marriage, and since the time of the marriage, *M.*'s second husband had had the exclusive management of the property. In execution of a decree against the husband, his right, title, and interest in and to a portion of the property were put up for sale, and purchased by the plaintiff. The plaintiff's right to possession was disputed by *M.*, who contended that her husband took no interest in the two-thirds of the property which went to the Crown which could be attached and sold in execution. In a suit by the plaintiff to establish her rights over the property—*held*, that the Crown would be estopped by the line adopted by the Commissioners of the Treasury in 1841 from asserting its claim to the two-thirds; that *M.* had a good title to the whole estate even as against the Crown. *TOOLSEEMONEY DOOSEE v. CORNELIUS*, [xi 144]

2. — *Letters of Administration—Parties—The Administrator General's Act XXIV of 1867, s. 15—Succession Act (X of 1865), s. 224*] The plaintiffs applied for probate of the will of one *R. D.* to be granted to them as executor and executrix thereof. The Administrator General had entered a caveat and appeared to oppose the application. The petition for probate was therefore ordered to be treated as plaint, both parties to file a written statement, and the case was set down to be heard. At the hearing it appeared that *R. D.* was illegitimate, and the issue for trial was whether the document was or was not her will. *Held*, that the Administrator-General would be entitled to letters of administration under s. 15, Act XXIV of 1867, and that it was not necessary to make the Government a party to the suit. *Semble*.—The Administrator-General would have been entitled to apply for letters of Administration under s. 224 of Act X of 1865. *DEMELLO v. BROUGHTON* — — — xi Ap. 6

ILLEGITIMATE CHILDREN.

See HINDU LAW, MAINTENANCE.
HINDU LAW, MARRIAGE.

IMMOVEABLE PROPERTY.

See CIVIL PROCEDURE CODE, s. 34.
LIMITATION ACT XIV OF 1859,
s. 1, CL. 12.
SMALL CAUSE COURT, MOFUSSIL.

IMMOVEABLE PROPERTY, AGREEMENT DEFINING SHARES IN.

See LIMITATION ACT XIV OF 1859,
s. 1, CL. 12.

IMMOVEABLE PROPERTY, DOCUMENT RELATING TO.

See REGISTRATION.

IMPARTIBLE ESTATE.

See HINDU LAW, CUSTOM.
HINDU LAW, INHERITANCE.

IMPRISONMENT.

See SENTENCE.

IMPROPER MEANS.

See CIVIL PROCEDURE CODE, s. 272.

INCOME, HINDU WIDOW'S RIGHT TO.

See ACCUMULATIONS.

INCOME, PURCHASE OF PROPERTY OUT OF.

See HINDU LAW, ALIENATION.

INCORPOREAL HEREDITAMENT.

See JALKAR.

INCUMBRANCES.

See BENG. ACT VIII OF 1865.
LANDLORD AND TENANT.
SALE FOR ARREARS OF RENT.
SALE FOR ARREARS OF REVENUE.

INCUMBRANCES, POWER OF CREATING.

See GHATWALI TENURE.

INDIAN COUNCILS' ACT (24 & 25 Vict., c. 67)—*Circular orders passed by Judicial Commissioner of Punjab.*] The Circular Orders as to the liability of Government for debts of rebels, issued by the Judicial Commissioners of the Punjab, were not laws within the meaning of 24 & 25 Vict., c. 67. *SALIGRAM v. THE SECRETARY OF STATE* — — — xii P. G. 167

INDIGO FACTORY, ASSIGNMENT OF.

See VENDOR AND PURCHASER.

INFANT.

See GUARDIAN.
MINOR.
PAUPER SUIT.

INFORMATION OF COMMISSION OF OFFENCE.

See ABETMENT.
REMAND, CRIMINAL CASES.

INFRINGEMENT OF RIGHT.

See DAMAGES, SUIT FOR.

INHERITANCE.

See HINDU LAW, INHERITANCE.
HINDU LAW, STRIDHAN.
HINDU LAW, WIDOW.
MAHOMEDAN LAW, INHERITANCE.

INHERITANCE, FORFEITURE OF.

See HINDU LAW, INHERITANCE, EXCLUSION FROM.
HINDU LAW, WIDOW.

INJUNCTION—Civil Procedure Code, s. 92.]

Certain immoveable property was attached in execution of a decree obtained by *Z.* against *N.* A claim was thereupon put in by *S.*, but his claim was refused, and he brought a suit as provided by s. 246 Act VIII of 1859 against *Z.* to establish his right and applied for and obtained an injunction under s. 92 restraining *Z.* from proceeding to execute his decree against the property in dispute: *N.* was subsequently made a party to the suit under s. 73 of Act VIII of 1859. From the order granting the injunc-

INJUNCTION—continued.

tion *L* appealed to the High Court. *Held*, that this was not a proper case for the issue of an injunction under s. 92. There was nothing to show that the property in dispute was in danger of being wasted, damaged or alienated by *L*. nor was the property in his possession. The proper course would have been for *S*. to have applied by petition for a postponement of the sale, the attachment continuing. The Court ordered the injunction to be dissolved, and that an order should be entered on the execution proceedings staying the sale pending *S*'s suit, leaving it open to *L*. in case there should be undue delay to make application to the Court for an immediate sale. **ROY LUTCHMEPUT SINGH v. SECRETARY OF STATE,** [xi Ap. 28]

2. — *Civil Procedure Code, ss. 92, 96—Suit for compensation—Cause of action—Limitation Act XIV of 1859, s. 1, cl. 2.* *A.* having brought a suit against *B.*, obtained and issued, on the 24th July, 1868, an injunction against him under s. 92, Act VIII of 1859. The suit was on the 18th of August, 1868, dismissed; but no compensation was awarded to *B.*, under s. 96 of Act VIII of 1859, in respect of the injunction which had been issued against him. *A.* and *B.* both appealed, the former against the decision dismissing his suit, the latter for compensation. Both appeals were dismissed on the 23rd November, 1869; *B.*'s because it was engrossed on a stamp paper of the value of eight annas only. *B.*, on the 16th December, 1869, then instituted a suit against *A.* in the Small Cause Court, for damages in consequence of the injunction which *A.* had caused to issue against him in his suit. *Held*, that *B.* was not debarred, by s. 96 of Act VIII of 1859, from instituting a suit against *A.* for damages, there not having been an award of compensation under that section. The cause of action accrued from the time at which the plaintiff was first damaged by the wrongful injunction, continued as long as the injunction remained in force, and limitation began to run as soon as the injunction was at an end. *Quere.* Whether cl. 2, s. 1, of Act XIV of 1859, applied to the case. *Semble.* It does not. **NANDA KUMAR SHAHA v. GAUR SANKAR** — v Ap. 4

3. — *Contradictory affidavits—Irreparable injury—Letters Patent, 1862 & 1865—Civil Procedure Code, ss. 92 & 94—Appealable order.* The plaintiffs being in possession of a certain mud dock used for docking and repairing vessels, and being threatened by the defendants with a suit to eject them therefrom, sued for specific performance of an alleged agreement between themselves and the defendants, under which they were, on certain terms, entitled to the use and occupation of the dock until the repairs of two of their vessels were completed; and for an injunction to restrain the defendants from ejecting them until the completion of the repairs. In support of an application for an *interim* injunction to restrain the defendants from taking proceedings to eject the plaintiffs until their suit had been heard,

INJUNCTION—continued.

the affidavits of the plaintiffs stated that on the faith of the agreement one of their steamers had been docked and taken to pieces; that the repairs could not be finished for a considerable time, and that the vessels could not be removed from the dock without great loss and irreparable injury to them. The affidavits of the defendants denied the making of the agreements alleged by the plaintiffs, and set forth another agreement, under which they alleged the plaintiffs had been in possession of the dock, and which agreement having come to an end they were entitled to eject the plaintiffs; they did not deny the loss to the plaintiffs which would be the result of moving the vessel before the repairs were completed, nor did they allege any delay in making the repairs, but they submitted that such loss would be the consequence of the plaintiffs' own act in docking their vessels without any final agreement having been come to between the parties. The dock was situated in the district of Hooghly, and the defendants' suit for possession, unless transferred to the High Court, would be tried in the Hooghly Court. There were facts which, in the opinion of the Court, went to show that the plaintiffs had acted *bonâ fide*. *Held*, (*per* MARKBY, J.) on the above facts, that inasmuch as the plaintiffs' statements, if true, raised a fair and substantial question for decision as to the rights of the parties, and looking to the inconvenience of allowing the same matter to be litigated simultaneously in different courts between the same parties, the plaintiffs were entitled to an *interim* injunction restraining the defendants from bringing their suit until the plaintiffs' suit was heard. *Semble.*—An *interim* injunction may issue although there is a contradiction on the facts. On appeal the Court was of opinion that, under the circumstances, there was an equity which entitled the plaintiffs to be kept in quiet and undisturbed possession of the dock until the repairs were completed; and confirmed the order for an *interim* injunction, but modified it by restraining the defendants not from bringing their suit, but merely from executing any decree they might obtain therein until the plaintiffs should have had a reasonable time to complete the repairs of their vessel. Although by the Letters Patent of 1865, the provisions of Act VIII of 1859 were not expressly made applicable to the High Court, as was done by the Letters Patent of 1862,—*semble*, the order granting the injunction was an order under s. 92, Act VIII of 1859, and therefore an appeal lay under s. 94. **MORAN v. RIVER STEAM NAVIGATION COMPANY** — — xiv 352

4. — *Trade mark, restraining use of—Fraudulent intention.* In an application for an injunction to restrain the use of a trade mark, it is not a sufficient defence to say there was no fraudulent intention, and that is no reason for not granting the application. **GRAHAM v. KER, DODS** — — — iii Ap. 4

INJUNCTION—continued.

5. — *Stay of sale.*] The plaintiffs, who were in possession of certain premises, brought a suit to restrain the defendant from selling a share in them which he had attached in execution of a decree upon a mortgage to him of that share, and to set aside the deed of mortgage. According to the plaintiffs' case they (the plaintiffs) were in possession under a decree of Court obtained upon a mortgage executed to them by the executor of the will of the last proprietor under a power contained in the will, and the mortgagors to the defendant, who were the brother and the son of the testator, had no interest in the property at the time of their mortgage to the defendant. The plaintiffs applied for an *ad interim* injunction, and the Court granted the application. **RUP-LAL KHETTRY v. MAHIMA CHANDRA ROY.**

[v 254

SERENARAIN CHUCKERBUTTY v. MILLER.

[v 254 note

6. — *Execution of decree—Family dwelling house—Suit for partition.*] A. obtained a decree against B and others (Hindus), on a title of purchase from them, for possession of an undivided moiety of a dwelling-house, to the remaining moiety of which C. (a Hindu) alleged he was jointly entitled, and that he and his family were in possession. On A.'s proceeding to obtain execution of his decree, C. brought a suit, alleging that A. had obtained no title under his purchase, and praying for partition of the property. On application for an *interim* injunction to restrain A. from executing his decree pending the partition suit, the Court granted the application. **ANANT-NATH DEY v. MACKINTOSH** — — — — — vi 571

7. — *Right of way—Ownership of soil—Suit for trespass, injunction, and to close doors.*] G. the owner of certain property, sold it in lots to different persons. The plaintiffs purchased a portion of the property, and obtained from G. a conveyance, in which the southern boundary of the land purchased by them was stated to be "the land of the said G. out of which he has allowed a passage six feet broad running almost straight west and east, and terminating on another passage leading, &c.;" the deed continued, "which two passages the said G. hath granted and allowed, and doth hereby grant and allow to" the plaintiffs, "their heirs, representatives, and assigns, and all other the purchasers of the northern portion of the said piece of land, &c., together also with the right of the two passages for ingress and egress hereinbefore mentioned." In a second deed conveying another parcel of land to the plaintiffs, G. said, with reference to the latter passage, "no one shall be able to throw sweepings or filth on the said road, or make it unclean; if any one does at any time act thus, you will deal with him according to the laws in force." The defendant had become possessed of part of the northern portion of the land sold by G. and he also owned, under a distinct title, a house abutting on the lane in dispute, but having no doors opening into it.

INJUNCTION—continued.

Shortly before the institution of the present suit, the defendant constructed three doors opening on to the lane, two of which were used for the purpose of cleaning two privies on the defendant's premises, and the third was used by the defendant and his servants as a means of access to the lane. In a suit by the plaintiffs seeking damages for trespass, and an injunction against the alleged wrongful user of the lane by the defendant, and praying that he might be ordered to close the three doors,—*held* (per COUCH, C.J., and MARKEY, J., overruling the decision of MACPHERSON, J.), that the plaintiffs had not such a property in the soil of the lane as would entitle them to prevent the defendant from making new doors on to the lane, and to restrain him from using the doors already made; they had only a right of way: but an injunction was granted restraining the defendant from using his door-ways for the purpose of cleaning his privies or in any other manner so as to obstruct the free use by the plaintiffs of the lane. **MADANMAHAN SEN v. CHANDRAKUMAR MOOKERJEE.**

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INJUNCTION TO RESTRAIN NUISANCE, SUIT FOR.

See LETTERS PATENT, CL. 12.
RAILWAY COMPANY.

INJURY, ANTICIPATION OF.

See DECLARATORY DECREE, SUIT FOR.
INJUNCTION.

INJURY TO NEIGHBOURING LAND BY USE OF WATER.

See DAMAGES, SUIT FOR.

INSANITY.

See HINDU LAW, INHERITANCE, EX-
CLUSION FROM.
MAHOMEDAN LAW, INHERITANCE.
MURDER.

INSOLVENCY—Order and disposition—Specific Appropriation—Insolvent Act (11 & 12 Vict., c. 21), ss. 23 & 24—Jurisdiction—Cause of action.] *St. & Co.*, merchants carrying on business at Glasgow, brought a suit against *J. C.*, official assignee, who resided in Calcutta, as assignee of the estate of *B. & Co.*, merchants, carrying on business at Calcutta, and *Sm. & Co.*, merchants, carrying on business at London. *St. & Co.* alleged in their plaint that they were the owners of certain goods, and sold the same to *B. & Co.* and *Sm. & Co.*, and drew for the price on *Sm. & Co.*, who accepted the drafts; that the goods were shipped to *B. & Co.*, at Calcutta; that at the time when the acceptances were given it was agreed upon between *St. & Co.*, *Sm. & Co.*, and *B. & Co.*, that they should be met and paid out of the sale proceeds of the goods, "which were thereupon specially appropriated thereto;" that *Sm. & Co.* and *B. & Co.* subsequently suspended payment, namely, in December, 1866, and January 1867; that in February, 1867, *B. & Co.* filed their petition in the Court for the Relief of Insolvent Debtors at Calcutta, having previously delivered a portion of the goods, and endorsed

INSOLVENCY—continued.

ed the bills of lading for the remainder to *J. S. & Co.*, who had notice of the insolvent state of *Sm. & Co.* and *B. & Co.*, without any consideration and without the consent or authority of *St. & Co.*, although the acceptances had not been met or returned, or the goods in any way paid for; that the proceeds arising from the sale of the goods had been handed over by *J. S. & Co.* to *J. C.*, who threatened and intended to apply the same in payment of the general body of creditors of *B. & Co.* *St. & Co.* prayed that the rights of the parties to the suit might be declared; that an account might be taken of what had been received by *J. C.* in respect of the proceeds of such sale; that *J. C.* might be directed to pay to *St. & Co.* what on taking such account might be found due to them; that a receiver might be appointed; that meanwhile *J. C.* might be restrained by injunction from paying over the same to any one except *St. & Co.* On the case coming on for settlement of issues, the suit was dismissed by *NORMAN, J.*, on the ground that, from the facts alleged in the plaint, the inference was that the goods were in the possession, order, and disposition of *B. & Co.* as reputed owners, with the consent of *St. & Co.*, within the meaning of s. 23 of the Insolvent Act; and therefore the goods and the sale proceeds rightly passed to *J. C.* as assignee; and further that the Court had not jurisdiction to declare the rights of all parties as prayed for; that the cause of action did not wholly arise within the jurisdiction, and it was not shown that leave had been granted to institute the suit. *Held* on appeal that the Court had jurisdiction to entertain the suit, and the plaint sufficiently disclosed a cause of action. *St. & Co.* had a right to have it tried whether they had an equitable charge upon the proceeds for the purpose of paying the bills. *STERLING v. COCHRANE* - - - - 10 C. 114

2. — *C. & Co.* merchants, carrying on business in Manchester, brought a suit against *J. C.*, official assignee who resided at Calcutta, as assignee of the estate of *B. & Co.*, merchants, carrying on business at Calcutta, and *S. & Co.* and *M. & Co.* and other merchants carrying on business in London and Glasgow respectively. *C. & Co.* alleged in their plaint that under an arrangement with *B. & Co.* and *S. & Co.* they shipped on the joint account of the three firms goods to *B. & Co.* at Calcutta, drawing for the price on *S. & Co.* who accepted their drafts in respect thereof; that *C. & Co.* had a one-third share in the above joint accounts; *S. & Co.* had a one-third share, and *S. & Co.* and *M. & Co.* had a one-third share between them; that the whole of the goods were purchased and paid for by *C. & Co.*; that at the time the acceptances were given, it was distinctly agreed upon by all the parties that the bills should be met and paid out of the sale proceeds of the goods, "which were thereupon specifically appropriated thereto;" that *S. & Co.*, subsequently suspended payment in December, 1866, and *B. & Co.*, in January, 1867;

INSOLVENCY—continued.

that in February, 1867, *B. & Co.*, filed their petition in the Court for the Relief of Insolvent Debtors at Calcutta, having previously sold a portion of the goods, and delivered the remainder to *J. S. & Co.*, as agents, for sale on account of *C. & Co.*, and the other parties interested, *J. S. & Co.* being instructed by *B. & Co.* to hold the same to a separate account of *B. & Co.*; that *J. S. & Co.* had received the proceeds of the sale of the whole of the goods; that the proceeds arising from the sale had been handed over by *J. S. & Co.* to *J. C.*, who threatened and intended to apply the same in payment of the general body of creditors of *B. & Co.* *C. & Co.* prayed that rights of the parties to the suit might be declared; that an account might be taken of what had come into the hands of *J. C.* in respect of the goods; that *J. C.* might be declared answerable to *C. & Co.* for the amount which should be found to be due to them on such account; that *C. & Co.* might be declared entitled to the sum so found due for the price of the goods and other payments made by them on account of the goods; that *J. C.* might be directed to pay to *C. & Co.* what should be found to be due to them on taking an account; that the proceeds might be directed to be paid amongst the parties to the suit, according to their respective shares and interests therein; and that, in the meantime, *J. C.* might be restrained, by injunction, from paying over the same to any one except *C. & Co.* On the case coming on for settlement of issues, the suit was dismissed by *NORMAN, J.*, on the ground, that the Court had not jurisdiction to declare the rights of parties as prayed, and no cause of action was disclosed against the official assignee. *Held*, on appeal, the Court had jurisdiction to entertain the suit, and the plaint sufficiently disclosed a cause of action. *C. & Co.* had a right to have the question tried whether, by the alleged arrangement, the proceeds of the goods were specifically appropriated to payment for the goods, and the Court had clearly jurisdiction to compel *J. C.*, the official assignee, to apply the proceeds, as far as they may have been specifically appropriated. *COLLIER v. COCHRANE* - - - - 10 C. 131

3. — *Order—Disposition—Specific appropriation—Insolvent Act (11 & 12 Vict. c. 21) ss. 23 & 24.* In 1862 the plaintiff's former firm of *J. S. B. & H.*, of Manchester, entered into an agreement with *S. & Co.*, of London, and *B. & Co.*, of Calcutta, to purchase and ship, on the joint account of the three firms, certain goods to *B. & Co.*, each firm taking one-third share of the profit or loss in the transaction; and by the agreement it was stipulated as follows:—" *J. S. B. & H.* to draw at six months on *S. & Co.* for cost of goods, including packing charges; said bills to be discounted (and domiciled) at *Owenend, Gurney & Co.* at 1½ per cent. in excess of bank's minimum rate. *B. & Co.* to remit their three months' or six months' drafts as

INSOLVENCY—continued.

may appear most desirable on *S. & Co.*, in favour of *J. S. B. & B.*, which *Overend, G. & Co.*, agree to take at $1\frac{1}{2}$ per cent. above bank minimum rate for three months, and $1\frac{1}{2}$ per cent. for six months as provision for said six months' drafts. *B. & Co.*, on sale of goods to specially remit proceeds to *Overend, Gurney & Co.* in first class bills drawn in favor of *Overend, Gurney & Co.* *Overend, Gurney & Co.* agree to give up *B. & Co.* drafts on *S. & Co.* on receipt of the said remittances under rebate. In the event of *S. & Co.* being brought under cash advances, *J. S. B. & B.* agree to find cash to the extent of one-third the amount." In 1863 *J. S. B.*, one of the members of the firms of *J. S. B. & B.*, retired from the firm, which was carried on under the name of *T. B. & Bro.*, and the agreement of 1862 was continued by that firm with the two other firms of *S. & Co.* and *B. & Co.* Under it certain goods were, in September, October, and November, 1866, purchased by the plaintiff, and shipped to *B. & Co.*, on triplicate account, and bills were drawn by the plaintiff on *S. & Co.*, as agreed, and were deposited with *A. C. & Co.*, not with *O. G. & Co.* On the 2nd January, 1867, in consideration of the plaintiff taking on himself all the risk attaching to the said goods, *S. & Co.* and *B. & Co.* transferred all their right, title, and interest of the said goods to the plaintiff. This agreement was signed on behalf of *B. & Co.* by *L. B.* in his own name, one of the members of the firm then in London, who stated that he had the authority of his partners for so doing. On this agreement being made, *B. & Co.*, by the direction of the plaintiff, handed over the goods and documents relating thereto to *B. B. & Co.*, of Calcutta, on the 16th January, 1867. *B. & Co.* stopped payment on the 27th December, 1866, and *J. H. R.*, the only partner of that firm then in Calcutta, filed his petition in the Insolvent Court there on the 7th February, 1867. *L. B.* filed his petition in the said Court on the 18th May, 1867. *S. & Co.* stopped payment in December, 1866. On the 16th March, 1867, an order of the Insolvent Court was made in the matter of the petition of *J. H. R.*, and in pursuance of this order *B. B. & Co.* delivered to the defendant, as official assignee of the estate of the said *J. H. R.*, the unsold goods in their hands, which had been transferred to them by *B. & Co.* and the net proceeds of those which they had sold. Held by NORMAN, J., that the agreement of January 2nd was fraudulent and void against the creditors of *B. & Co.*, under 13 Eliz., c. 5, if not void under s. 24 of the Indian Insolvent Act. On appeal, held by PEACOCK, C. J., that the goods were sent to *B. & Co.* on a special trust, and there was a specific appropriation of the proceeds binding in the case either in the insolvency or bankruptcy; that the agreement of January 2nd was valid and binding on the assignee of *B. & Co.*; that by it the property in the goods passed to *T. B. & Bro.*; but

INSOLVENCY—continued.

if it did not, the proceeds were specifically appropriated to taking up the bills of *B. & Co.* on *S. & Co.*; and until they were paid *B. & Co.* had no interest in the goods which could justify their assignee in stopping the remittance of the proceeds or of taking the property out of the possession of *B. B. & Co.*; that the plaintiff was entitled to the proceeds with interest from the time the proceeds and goods were handed over to the assignee, and that the goods were not in the order and disposition of *J. H. R.* at the time of his filing his petition within s. 23 of the Indian Insolvent Act. Per MARKBY, J.—Each of the two firms and Barlow were in the outset part owners of these goods, and each became liable to the others to contribute his share towards the cost price thereof. In November, 1866, there ceased to be a binding agreement to remit the proceeds to *O. G. & Co.*, and no new agreement was substituted. The agreement of 2nd January did not renew the right to have the proceeds remitted for special appropriation, and it was moreover a fraudulent preference and void so far as *B. & Co.* were concerned. On 16th January, when the goods were transferred to the plaintiff, he was merely a creditor, and therefore a transfer for his benefit, within two months of filing petition of insolvency, was void under s. 24 of the Insolvent Act. BARLOW v. COCHRANE — — — ii O. C. 56

4. — *Execution creditor—Attachment—Official Assignee.*] The property of *A.* was attached under a decree obtained by *B.* After the attachment, but prior to the sale, *A.* was adjudicated an insolvent, and the usual vesting order was made. On the following day the agents of the Sheriff, by the order of the Official Assignee, sold the property attached for the recovery of the amount of *B.*'s decree, &c., and the proceeds of the sale were handed over by them to the Official Assignee. Subsequently the petition of the insolvent was dismissed. Immediately thereupon, on the same day, *C.*, another execution creditor, attached the proceeds of sale in the hands of the Official Assignee. *B.* applied to the Court to order the Official Assignee to hand over the proceeds to the credit of his cause. On the same day *A.* filed a fresh petition in the Court for the Relief of Insolvent Debtors, and a second vesting order was made. *C.* claimed that the proceeds of sale should be handed over to him. Held that *B.* was entitled to have the proceeds paid to him. WINTER v. GARTNER. [1 O. C. 79]

5. — *Attaching creditor—Official Assignee—Priority.*] *A.* obtained a decree against *B.*, and in execution attached property of *B.*, in Zillah Dinagore, in January, 1868, which was sold on the 19th of March. In the meantime *B.* had been adjudicated an insolvent, and the usual vesting order was made on March 6th. Notice of this order reached the Judge of Dinagore after the sale, but before the sale had been confirmed, and the proceeds handed

INSOLVENCY—continued.

over. *Held* that the Official Assignee was entitled to the proceeds of the sale. **INDRA CHANDRA DOGAR v. TARACHAND DOGAR,**

[ii A. C. 61]

6. — *Priority of Official Assignee,—Vesting order—Attachment of money in execution of decree.* In execution of a decree of the Small Cause Court, certain goods belonging to the judgment debtor, together with a sum of Rupees 227 in cash, were seized on the 22nd November; and on the 30th, the Rupees 227, together with the proceeds of sale of some of the goods, were placed to the credit of the decree-holder in the books of the Court. On the 25th November, the judgment-debtor was declared an insolvent, and by a vesting order of the same date his estate was transferred to the Official Assignee. *Held*, that the execution was complete by the seizure of the money, and that the Official Assignee was not entitled to the sum of Rupees 227 as against the execution creditor. **GRISH CHANDRA ROY v. PRASANNA KUMAR CHINA** — — iv O. C. 94

7. — *Priority of Official Assignee—Vesting order—Sale in execution of decrees—Auction purchaser.* In September, 1867, A. obtained a decree against B., and on 12th January, 1868, caused a piece of land to be attached in execution. On 17th April, 1868, it was sold by order of the Zillah Judge, and bought by C. Before this, however, the judgment-debtor, B., had filed his petition in the Insolvent Court, and on the 6th March, 1868, a vesting order was made. On 24th July, 1868, the official assignee sold the premises by the order of the Insolvent Court. The purchaser at the last-mentioned sale now sued to recover the property from the purchaser at the sale in execution of A.'s decree. *Held* (*per* COUCH, C. J., BAYLEY, KEMP, and JACKSON, JJ.),—that the vesting order passed the property to the Official Assignee, subject to being divested by a sale in execution of the decree; that the sale in execution by order of the Zillah Judge was legal notwithstanding the vesting order; that the purchaser at the sale by order of the Insolvent Court had no right to recover it from him. The attaching creditor had a right to have the attached property sold, and the money realized by the sale paid to him. *Per* PHEAR, J.—The jurisdiction of the Zillah Judge to order the sale was not affected by the vesting order; but before making the order for sale the Official Assignee should be heard; and unless special reason be shown upon the Official Assignee's application, the execution proceedings should be stayed or set aside. In the present case it must be assumed that the judge made the order for sale in due course, and consequently that sale operated to pass the property out of the hands of the Official Assignee into those of the auction-purchaser. **ANAND CHANDRA PAL v. PANCHILAL SURMA,**

[v F. B. 691]

8. — *Priority of Official Assignee—Attachment before judgment — Civil Procedure Code, s. 81—Insolvent Act (11 & 12 Vict., c. 21),*

INSOLVENCY—continued.

ss. 7 and 49.] The plaintiffs brought a suit against P. & Co., for the recovery of a sum of money with interest, and on 15th May obtained a prohibitory order for attachment before judgment under s. 81 of Act VIII of 1859, under which they attached, on the 17th of May, the right, title, and interest of P. & Co. in the premises in which they carried on business in Calcutta. On the 20th of May, P. & Co. were adjudicated insolvents on the petition of other creditors, and the usual order was made vesting their estate and effects in the Official Assignee. On an application on behalf of the Official Assignee for an order releasing the property from attachment, the Court ordered the prohibitory order to be set aside, and the property attached thereunder to be released. **BANK OF BENGAL v. NEWTON** — — xii Ap. 1

9. — *Execution creditor, right of against Official Assignee—Payment of proceeds of sale into Court.* A. obtained a decree against B. on 15th August, 1870, and an order for execution thereof on 8th September. In pursuance of such order the Sheriff attached certain property belonging to B.; and by order of Court of 14th September the Sheriff was directed to sell the property so attached, and the sale was fixed for 1st December. On 30th November B. filed his petition in the Insolvent Court, and the usual vesting order was made. On 1st December the property was sold by the Sheriff under the order of 14th September, and the proceeds were paid into Court. *Held*, that the execution-creditor was entitled as against the Official Assignee to be paid out of the proceeds. **AGA MAHOMED ALI SHERAJI v. JUDAH** — — — — — vii 50

10. — *Insolvent Act's. 24—Voluntary assignment—Deposit of title deeds—Right of Official Assignee*] The firm of C. N. & Co., Calcutta, had an account with a bank, of which R. was the manager, under an arrangement that the bank should discount bills accepted by C. N. & Co. to a certain amount, and that C. N. & Co. should keep in the bank a certain fixed cash balance. In November R., finding that the limit of the discount accommodation had been exceeded and the cash account overdrawn, declined to discount any more bills unless security were given for the amount then due to the bank. A., the only partner in the firm of C. N. & Co. then in Calcutta, verbally promised on 24th November to deposit with the bank the title-deeds of the premises in which C. N. & Co. carried on their business; and in consideration of such promise R. discounted further bills from 24th to 29th November. A. sent to R. a letter on 25th November as follows: "In pursuance of the conversation the writer had with you yesterday, we now deposit the title-deeds of landed house property as security against our discount account." The letter enclosed certain title-deeds, of which R. acknowledged the receipt. R. subsequently discovered they were not the title-deeds which A. had promised to deposit, and of this he gave A. notice by letter

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on 28th November. *C. N. & Co.*, on 5th November, 1870, suspended payment, and by the usual order their estate and effects vested in the Official Assignee, who thereupon finding that the bank claimed a lien on the deeds, brought a suit against the bank for recovery of them. *Held* that the deposit of the title-deeds was not void under s. 24 of the Insolvent Act. *MILLER v. THE CHARTERED MERCANTILE BANK OF INDIA, LONDON, AND CHINA*, vi 701

11. — *Proof of claim—Giving up security—Realization of security.* In 1870 the firm of *S. M. & Co.*, of Calcutta, authorized *A.*, of the firm of *C. N. & Co.*, also of Calcutta, to indent for them for iron from England. In pursuance of such authority, *C. N. & Co.* ordered, through their London agents, *P. P. & Co.*, a shipment of iron, which was duly shipped by *P. P. & Co.*, who drew against the said shipment two bills of exchange for Rs. 10,000 and Rs. 1,484-10, respectively, on the firm of *S. M. & Co.*, in favor of *C. N. & Co.* The bills, on presentation, were duly accepted by *S. M. & Co.*, and afterwards discounted by *C. N. & Co.* with the Chartered Mercantile Bank, *C. N. & Co.* at the same time depositing with the bank as collateral security for the payment of the bills, the bill of lading for the iron shipped from England by *P. P. & Co.* Subsequently both *S. M. & Co.* and *C. N. & Co.* filed their petitions in the Insolvent Court, and were adjudicated insolvents. In the schedule of *S. M. & Co.* the bank was inserted as a creditor in respect of this transaction for Rs. 11,484-10. When the bills of exchange became due, they were duly presented for payment to the acceptors, but were dishonored, and protested by the bank for non-payment, and on such non-payment the bank sold the shipment of iron for which it held the bills of lading, and realized the sum of Rs. 10,073-12-6. The bank claimed to prove for the whole amount in the schedule against the estate of *S. M. & Co.* *Held*, that the bank was only entitled to prove for so much as was due to it on the bills of exchange after deducting the amount realized by the sale of the iron. In the circumstances of the case *C. N. & Co.* were interested in the shipment of iron as well as *S. M. & Co.*, and therefore there was no obligation on the bank to give up the security before proving its claim, but it might have proved for the whole amount of the debt and retained the security. *IN THE MATTER OF SHIB CHANDRA MULLICK* viii 30

12. — *Proof of claim—Dividend already declared.* A claim was made against the estate of an insolvent in respect of certain bills of exchange, on which dividends had been declared in favour of the present claimant by the Official Assignee on the estates of two other insolvents, but which bills of exchange were also included in the present claim. *Held* that the dividends declared on the two other insolvents must be deducted from the amount of the claim, though no payment in respect of

INSOLVENCY—continued.

the dividends declared had been actually made. *IN THE MATTER OF PARKE PITTAR*, [viii 118]

13. — *Suit on promissory note endorsed by an insolvent—Right of Official Assignee to intervene—Civil Procedure Code, s. 73.* In a suit brought on a promissory note, dated 15th February, 1872, made by the defendant and payable to one *L.*, and endorsed by *L.* to the plaintiff for value, it appeared in evidence on the hearing of the case as an undefended cause, that *L.* had been insolvent, and that the note had been delivered to him and endorsed by him to the plaintiff between the dates of his obtaining his personal, and his final, discharge, and the suit was ordered to stand over and notice to be given to the Official Assignee. On an application by the Official Assignee that the suit should be adjourned, and the Official Assignee be added as a party, the Court *held*, that he had a right to intervene, and an order was made postponing the hearing of the suit for a month to enable the Official Assignee to institute a suit on the note. *KELLY v. HANLON* — — — — — i Ap. 23

14. — *Rules of Insolvent Court—Rule 25—Leave to defend suit without fees.* Leave granted to the Official Assignee under Rule 25 of the Rules of the Insolvent Court to defend, a suit without paying Court fees. *HIRALAL SEAL v. SCHILLER* — — — — — vii Ap. 61

INSOLVENT ACT (11 & 12 Vict., s. 21).**See INSOLVENCY.**

—, s. 5 — *Jurisdiction—Residence—Letters Patent, cl. 18.* The petitioner came down from Cawnpore, where he had resided for some time, to Calcutta, to file his petition. He stated that he intended to settle in Calcutta on obtaining his discharge. *Held*, that his being in Calcutta under these circumstances did not constitute residence. *Held* also, that by cl. 18 of the Letters Patent, the jurisdiction of the Insolvent Court has been narrowed to the Bengal Division of the Presidency of Fort William,—i. e., that portion of the Presidency over which the authority of the Lieutenant-Governor of Bengal extends. *Semble.*—Under s. 5 of the Insolvent Act, the residence of the petitioner must be within the local limits of the ordinary original jurisdiction of the High Court. *IN THE MATTER OF TRETINS*, [i O. C. 84]

2. — *Jurisdiction—Insolvent trader—"Reside."* The word 'reside' in s. 5 of the Insolvent Act, when applicable to the insolvency of traders, includes an occupation for the purpose of trading, whether or not accompanied by sleeping or dwelling. *IN THE MATTER OF HOWARD BROTHERS* — — — — — xi 254

3. — *Jurisdiction of Insolvent Court—Bonâ fide residence.* An insolvent who is not a European British subject must either be a bonâ fide resident in Calcutta at the time he presents his petition, or a trader carrying on business in Calcutta, otherwise he does not

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 5—contd.

come within the jurisdiction of the Court under the Act. **IN THE MATTER OF TARINNEY CHURN GOHO** - - - - xi Ap. 26

—, s. 6—*Verification of schedule by affidavit—Nonappearance of insolvent.*] In an application by insolvents for their personal discharge, the trustee under the bankruptcy of one R. in England appeared, and it was ordered that the further hearing should stand over with *ad interim* protection, and that the insolvents should amend their schedule; at this hearing, A., one of the insolvents, was examined; on another application for personal discharge, it appeared that, subsequent to the former order, A. had left India on account of ill-health, and was, therefore, unable to verify the schedule. No opposition was entered, and the other insolvent M., the partner of A., was in Court. *Held*, it was sufficient for the schedule to be attested by M., but the Court directed that an affidavit of A. should be obtained verifying the schedule, sworn before a notary public or the British Consul. Personal discharge was allowed. **IN THE MATTER OF ANSTROTHER** - - - - xi Ap. 34

—, s. 7—*Discharge—Dismissal of petition—Power to set aside order of dismissal when fraud is shown.*] When an insolvent has obtained his discharge, a Commissioner has no jurisdiction, on the application of some of the creditors, to make an order dismissing his petition, and ordering the estate and effects of the insolvent in the hands of the Official Assignee to be made over to certain persons on behalf of the creditors. The petition being dismissed the property reverted in the insolvents. The Court which passed the order dismissing the petition, upon finding such order had been obtained by fraud, has power to set aside the order. **IN THE MATTER OF THE PETITION OF RAM SEBAK MISSEK** - - - - vi 310

2. — *Power of Court—Application to withdraw Petition—Consent of creditor.*] The Insolvent Court has no power to allow an insolvent to withdraw his petition of insolvency, on the ground that he has made a compromise with his creditors. Where, however, the Court is satisfied that all parties concerned desire to take the matter out of the hands of the Court, it will dismiss the petition, even though there is no ground arising out of the facts of the case why the petition should be dismissed. **IN THE MATTER OF PYARI CHAND MITTER** - - - - vi 558

3. — *Distress—Vesting order—Time of operation of—Priority of Official Assignee.*] A distress levied after the filing of the petition of insolvency, but before the vesting order is drawn up, is, under ss. 7 and 22, invalid as against the Official Assignee. A vesting order is made when it is given by the Court, and not at the time it is drawn up, signed, and sealed. **IN THE MATTER OF BODREY** - - - - v 309

—, s. 9—*Revocation of adjudication—Notice to creditors—Practice.*] Certain persons had been adjudged insolvents under s. 9 of the Insolvent Act, but no schedule had been filed

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 9—contd.

and no claim proved. To an application on behalf of the insolvents after notice to the Official Assignee and to the attorney for the petitioning creditors for an order setting aside the adjudication on the ground that they had come to an agreement with their creditors, it was objected that notice must be given to all the creditors before the adjudication could be annulled. The Court *held* that the objection must prevail, but refused to make any order. If the adjudication were improper, it could not be set aside: if proper, a schedule must be filed in the usual way. **IN THE MATTER OF RAJ-NARAYAN PAL** - - - - xiii Ap. 25

—, s. 22.

See s. 7.

—, ss. 23 and 24.

See INSOLVENCY.

—, s. 26—*Right of owner to sue assignee.*] *Per* PEACOCK, C. J., and MARKBY, J.—An order under s. 26 of the Insolvent Act does not prevent the owner of the property which is the subject of the order from suing the assignee to establish his right to it. **BARLOW v. COCHRANE** - - - - ii O. C. 56

2. — *Jurisdiction of Insolvent Court—Order to deliver property to the Official Assignee.*] The Insolvent Court has a discretionary power, under s. 26 of the Insolvent Act, to order any person who has the possession of, or has under his power or control, any property of the insolvent, to deliver over such property to the Official Assignee. **IN RE DWARKANATH MITTER; RATANMANI DAS v. MILLER** - - - - iv O. C. 63

3. — *Jurisdiction.*] *Per* NORMAN, J. (PAUL, J., dissenting).—The Insolvent Court has power, under s. 26 of 11 & 12 Vict., c. 21, to order any person who is in possession of, or has under his control, any property alleged to belong to the insolvent, to deliver such property to the Official Assignee. **IN THE MATTER OF ADJUDHIA PRASAD; JAIRAM GIR v. MILLER** - - - - vii 74

—, s. 36—*Practice—Counsel.*] A person from whom property is sought to be taken under s. 36 of 11 & 12 Vict., c. 21, is entitled to be represented by counsel. **IN THE MATTER OF NOLITMOHUN DOSS** - - - - xi Ap. 33

2. — *Abatement of suit—Death of party instituting proceedings—Representative.*] Proceedings in the Insolvent Court do not necessarily abate by the death of the party who institutes such proceedings. There is nothing in the Indian Insolvent Act, or in the rules of the Court, which prevents the Commissioner from allowing the proceedings to be carried on by the representative of such deceased party, he being interested in them. **IN THE MATTER OF RAM SEBAK MISSEK; PALTU v. JANKI PRASAD; RAMZAN ALI v. JANKI PRASAD** - - - - vi 119

—, s. 40—32 & 33 Vict., c. 71 (*The Bankruptcy Act, 1869*)—*Proof of claim—Breach of contract—Unliquidated damages.*] A claim for unliquidated damages arising out of a breach

INSOLVENT ACT (11 & 12 Vict., c. 21), s. 40—continued.

of contract, was allowed to be proved in the Insolvent Court under s. 40, Insolvent Act. *Semble.*—The provisions of the English Bankruptcy Act with regard to such claims apply to India. **IN THE MATTER OF OMERTOLALL DAW** - - - - - xiii Ap. 2

2. — *Sale of mortgaged property—32 & 33 Vict., c. 71 (The Bankruptcy Act, 1869)—Rules 78 to 81.*] The insolvents filed their petition on 17th March, 1873, and obtained their final discharge on 2nd September, 1873. After their discharge a creditor, to whom they had mortgaged certain property, made an application for the sale of the mortgaged properties, and the petitioner prayed for an order for an account of what was due on the mortgage, and for a sale under the conduct of the Official Assignee; that he should be at liberty to bid and set-off the amount of the purchase against the sum due to him; that if any other person became the purchaser, the proceeds should be paid to him in liquidation of his debt, and that, after crediting that amount, the applicant might rank as a creditor to the estate for any remaining balance. The Court ordered the sale to be made as prayed in the petition, the Official Assignee to reserve a price on the property, and duly advertise it for sale; if not sold by public auction, application should be made to the Court by the Official Assignee for leave to sell by private contract. **IN THE MATTER OF HOWARD BROTHERS** - - - xiii Ap. 9

—, s. 42—*Preferential claims—Costs—European assistants and Native workmen of insolvent firm.*] The application for payment under s. 42 of the Insolvent Act must be taken to imply consent to a dissolution of the contract of service by the filing of the petition. Claims, therefore, by servants of insolvent firm only allowed up to date of insolvency, not to the end of the month. Claim of servant who had left insolvent's service before date of insolvency, allowed but only for so much as accrued due to him within the six months previous to insolvency. Sum agreed to be paid to an assistant as extra salary or remuneration for making up insolvent's statement to be laid before the creditors, disallowed. Costs of the applications allowed out of the estate. One claimant was manager of the insolvents' business at Simla on salary of Rs. 350 per month, up to 11th April, 1867, when one of the partners wrote to him, promising him commission to make his salary up to Rs. 500. During the six months previous to the insolvency he had received Rs. 3,100, being more than the salary claimed for six months. Claim disallowed. **IN THE MATTER OF PARKE PITTAR & Co.** - - - - - vi Ap. 144

—, ss. 72, 73—*Evidence not in writing—Appeal.*] Where the evidence has not been taken down in writing as provided by s. 72 of the Insolvent Act, the evidence cannot be gone into on appeal under s. 73. **IN THE MATTER OF ADJUDHIA PRASAD; JAIRAM GIR o. MILLER** - - - - - vii 74

INSOLVENT ACT (11 & 12 Vict., c. 21)—*contd.*

—, s. 73—*Appeal—Power of Commissioner.*] A Commissioner has no power, under s. 73 of the Insolvent Act, to extend the time for presenting a petition of appeal from an order of the Insolvent Court. **IN RE GHOLAM RASUL KHAN** - - - - - i O. C. 130

2. — *Power of Commissioner—Attachment of property, application for.*] The gomasta of an insolvent claimed to retain certain property as against the insolvent, and disobeyed an order of Court that he should make over the property to the Official Assignee, whereupon an order of attachment was made absolute against him. Before such order was made absolute, the gomasta and another person had obtained a money-decree against one *R. Held*, the Commissioner has no powers except those conferred by the Act, and therefore could not grant an application by the Official Assignee that half the amount of the decree still in the hands of *R.* should be attached and brought into Court. **IN RE KHETTSEY DAS** - iii Ap. 14

3. — *Civil Procedure Code, s. 342—Appeal from Commissioner of Insolvent Court—Security for costs.*] S. 342 of Act VIII of 1859 does not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. The right of appeal is given by s. 73 of the Indian Insolvent Act, and the Court cannot impose on the appellant a condition that he shall give security for the costs of such an appeal. **IN THE MATTER OF RAM SEBAK MISSEH**, v 179

4. — *Security for costs—Nonappearance of insolvent.*] On an application for deposit of security for costs in an appeal by an insolvent under s. 73 of the Insolvent Act, in a case where the insolvent had been sentenced to imprisonment under s. 50 of the Act, and it was shown that he had absconded, the Court declined to make any order for security for costs, but refused to hear the appeal unless the insolvent was present. **IN THE MATTER OF GHASSEHRAAM** - xv Ap. 10

—, s. 86—*Entering up judgment against insolvent for nonappearance.*] The insolvent not appearing when his petition came on for hearing, an order was made on the application of the Official Assignee that the insolvent should attend on a day fixed for the purpose of being examined: the order to be served on him in the meantime. On the day fixed he did not appear, and an application was granted that judgment should be entered up against him under s. 86 of the Insolvent Act. That section was not repealed by Act XIV of 1870, **IN THE MATTER OF COSTELLO** - viii Ap. 57

INSTALMENTS, MONEY PAYABLE BY.

See BOND.

CIVIL PROCEDURE CODE, s. 206.

LIMITATION ACT XIV OF 1859,
s. 1, CL. 10; s. 20.

INSTALMENTS, PROMISSORY NOTE PAYABLE BY.

See CIVIL PROCEDURE CODE, s. 7.

INSURANCE—Total loss—Notice of abandonment.] A cargo, consisting of railway sleepers, was insured by the plaintiffs in the ship *Heimdal* from Geography Bay to Calcutta, and expressed in the policy to be warranted from all risks, except total loss. In proceeding up the river Hooghly, in charge of a pilot, on the 30th April, the vessel grounded on the Rungafulla Sand, heeled over, and lay imbedded in the sand. Endeavours were made unsuccessfully to get her off. On 5th May, Lloyd's surveyor inspected the vessel, and reported that, considering her position, the state of the tide at that season, and the expense of getting her off, it was unadvisable to go to further expense in doing so; and that the cost of repairs would, in all probability, amount to much more than the value of the ship when repaired. Some of the sleepers had been then jettisoned, and the surveyor recommended that the vessel and cargo should be abandoned, and sold by public auction to the highest bidder. Attempts were made, but unsuccessfully, to get some of the cargo off, and the sleepers were of such a quality that they would not float. The consignees accordingly caused the ship and cargo to be sold by public auction in Calcutta on 12th May. No notice of abandonment was given. The sleepers realized the sum of Rs. 450. The purchaser hired boats and began unloading the ship; he unloaded 78 sleepers in all. On 14th May the ship floated off and came up the river, with the rest of the cargo in safety, proving not to be so much damaged as was supposed. In an action on the policy of insurance, *held*, that there was not such a total loss of the cargo as entitled the plaintiffs to recover as for a total loss without giving notice of abandonment. *Held*, on appeal, *per* PHEAR and MACPHERSON, J.J.—The plaintiffs failed to prove any necessity for the sale of the ship, or that it was impracticable to convey the sleepers, or a material portion of them, to their destination. But if the insured were legally justified in abandoning and claiming as for a total loss, notice of abandonment ought to have been given. The condition and behaviour of the ship when she got off the shoal should be looked at as indicating her real state and strength while she was on it. *Per* PAUL, J.—Considering upon the evidence of the circumstances at the time of the sale that the ship was not worth repairing, and that she was expected to sink at any time, the sale of her was justifiable. The sale of the cargo was also justifiable; it could not have been carried, in a mercantile sense, on shore, much less to its destination. The sale caused a total loss, and there was no need for notice of abandonment. *EAST INDIAN RAILWAY COMPANY v. AUSTRALASIAN INSURANCE COMPANY* - - vi 218, S. C. on appeal, vii 347

INTENTION OF PARTIES AS EVIDENCED BY THEIR ACTS.

See ESTOPPEL.

EVIDENCE.

REGISTRATION ACT XVI OF 1864, s. 13.

INTEREST.

See CONTRIBUTION, SUIT FOR.
HINDU LAW, USURY.
MAHOMEDAN LAW, USURY.
MORTGAGE.
REGULATION XV OF 1793.

2. — *Execution of decree—Interest on mesne profits—Act XXIII of 1861, s. 11*] When a decree is silent as to interest, the Court executing the decree has no power to award interest. Act XXIII of 1861, s. 11, refers only to questions of amount of interest or mesne profits which are left open and not determined by the decree. *MOSOODUN LALL v. BEKAREE SINGH* - - Sup. Vol. 603
ABDUL ALF v. BIBI ASHRUFFAN,
[vii Ap. 30 note

3. — *Decree of Privy Council—Mesne Profits—Costs.*] In a suit to recover certain property, the plaintiff obtained a decree for a portion thereof, but on appeal the High Court reversed the decree, and declared him entitled to the whole. On appeal to the Privy Council the decree was, that the decision of the High Court be "reversed with costs," and the decree of the first Court "affirmed with costs." On this the first Court ordered the restitution of the property with *wasilat*, and also that the defendant should obtain interest on the costs both of the first Court and of the Privy Council: but he disallowed the costs of the High Court as not being expressly awarded by the Privy Council decree. *Held*, the defendant was entitled to mesne profits. Interest on the costs of the Privy Council should not be given, the decree being silent on the point; but the costs of the first Court would carry interest. The words "with costs" in the portion of the decree of the Privy Council affirming the decree of the first Court, mean the costs of the proceedings in the High Court. *GURUDAS RAI v. STEPHENS* - - xiii Ap. 44

4. — *Bond.*] When a bond is silent as to any interest to be allowed after the due date of the bond, it is in the discretion of the Court to fix the amount of interest, if any, to be paid from the due date of the bond to the date of the commencement of suit. *SITANATH BOSE v. MATHURA NATH ROY* - - ii Ap. 10

5. — *Costs—Execution of decree—Procedure.*] The Court in executing a decree has no power to allow interest on costs when not mentioned in the decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. *ULFUTUNNISSA v. MOHAN LAL SUKAL*,
[vi Ap. 33

6. — *Decree for interest without specifying date.*] A decree directed that from the original cause of action to date of suit, and from date of suit to date of decision, interest should be given at 12 per cent.; and from date of decision to date of liquidation, interest should be given without specifying the rate. The Judge gave 12 per cent. for this period, and an appeal from his order, on which it was contended that no rate being specified, no interest could be

INTEREST—continued.

given, was dismissed. **LALUN MANI v. BEHARI LAL MOOKERJEE** - - - - - vii Ap. 30

7. — *Costs—Execution of decree of Privy Council—Costs of translation and printing.* Where, on appeal to the Privy Council, it was ordered that the decree of the High Court be reversed with £276 12s. 2d. costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree, it was *held*, that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council, and that he was entitled to interest upon those costs, but not to interest upon the said £276-12-2. **MADAN THAKUR v. LOPEZ** - - - - - ix Ap. 23

UMATUL FATIMA v. AZHUR ALI,
[ix Ap. 23 note]

SABODA PRASAD MULLICK v. LUCHMIPAT SING DUGAR (where, however, **MARKBY, J.** dissented from the practice) - - - ix 23 note

8. — *Act XXXII of 1839—Promissory note payable on demand.* In an action for the balance due on a promissory note payable on demand, the Court refused to allow interest, there being no proof of a demand in writing. **BANK OF HINDUSTAN, CHINA, AND JAPAN, v. WILSON** - - - - - i O. C. 41

9. — *Payment into Court in satisfaction of decree.* When a payment is made into Court by a judgment-debtor in full satisfaction of the decree, but which the Court accepted and retained as a payment on account, the judgment-creditor can have no right to claim interest upon the whole amount of his decree. The Court executing the decree has a discretion in allowing interest, which will not be interfered with in special appeal. **PARESNATH MUKHOPADHYA v. KISTO MOHUN SAHA**,
[iii Ap. 105]

10. — *Arrears of rent.* It is in the discretion of the Court to allow interest on arrears of rent. **SATTYANAND GHOSAL v. ZAHIR SIKDAR** - - - - - vi Ap. 119

11. — *Beng. Act VIII of 1869, s. 21—Date of interest.* Under Beng. Act VIII of 1869, s. 21, it is discretionary with the Judge to give interest at 12 per cent.; he is not obliged to award interest to that extent. **DHIRAJ MAHTAB CHAND v. DEBKUMARI DEBI**,
[vii Ap. 26]

12. — *Bond—Payments on—Mode of calculating interest.* Where payment was made upon a bond, the amount paid being less than the interest due, *held*, the payment ought to go to reduce the amount of interest due, and the creditor in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree. **LUCHMESWAR SING v. LUTF ALI KHAN** - - - viii P. C. 110

13. — *Rate of interest—Bond payable by instalments—Penalty—Usury—Liquidated damages.* The defendant executed a bond in favour of the plaintiff, by which he agreed to pay "interest at 8 annas per cent., month after

INTEREST—continued.

month, and to repay the principal money within the period of three years." It was further stipulated in the bond that, "should I fail to pay the principal and interest as agreed upon, I shall pay interest at 4 per cent. per mensem from the date of this bond to that of liquidation." The defendant made default in payment. *Held*, in a suit brought on the bond, that the stipulation in the bond for the payment of interest at 4 per cent. per mensem was in the nature of a penalty, and the plaintiff was only entitled to recover interest at a reasonable rate. In this case 1 per cent. per mensem was given. **BICHOK NATH PANDAY v. RAM LOCHUN SINGH** - - - - - xi 135

14. — *Usury—Act XXVIII of 1855, s. 2—Liquidated damages—Penalty* The plaintiff advanced money to the defendants on an ikrar, by which it was agreed that he was to allow them to draw on him to the extent of Rs. 20,000 within three years, the plaintiff to repay himself by having an ijara of the defendants' share in certain property which his loan was to aid them in recovering. A 4-anna share of the profits, after deducting Government revenue and expenses, was to go in payment of interest on the money lent; half of the remaining three-fourths to go towards payment of the principal, and the other half to the defendants. If, at the end of the term, any balance remained due to the plaintiff, the defendants were to pay it with interest at 18 per cent. If the defendants failed to give the ijara, they agreed to pay the amount borrowed with interest at 6½ per cent. per mensem. The plaintiff advanced the money and obtained a receipt therefor from the defendants. The defendants failed in giving the plaintiff the ijara. In a suit brought to recover the sum lent by the plaintiff with interest, the first Court gave a decree for the plaintiff for the sum claimed with interest at the higher rate stipulated for in the ikrar, *viz.*, 75 per cent. On appeal by the defendants to the High Court the contention was raised that the rate of interest amounted to a penalty which the Court would not enforce, and that the contract was unreasonable and oppressive in character. The Judges differed in opinion, **BIRCH, J.**, holding that the contract was inequitable and oppressive, and that, notwithstanding the repeal of the usury laws by Act XXVIII of 1855, the Court was not bound to decree interest at the rate stipulated for by the parties; and **MARKBY, J.** (whose opinion prevailed), being of opinion that, since the passing of Act XXVIII of 1855, there was no legal restriction on the rate of interest; that the stipulation for interest at 75 per cent. was not a penalty, but an alternative stipulation for interest at a higher rate on the happening of events under which the lender incurred a greater risk, and that the contract should be enforced. *Held* (on appeal under cl. 15 of the Letters Patent), that the stipulation in the ikrar for interest at 75 per cent. was not in the nature of a penalty, nor was it an alternative stipulation; it was an estimate

INTEREST—continued.

by the parties of the damages to which the plaintiff would be entitled in the event of a breach of the contract by the defendants in not giving the *ijara*. **OMDA KHANUM v. BEOJENDRO COOMAR ROY CHOWDHEE** - xii 451

15. — *Stipulation in bond — Penalty.*] The plaintiff lent the defendant Rs. 700 on an agreement that it should be repaid with interest at 8 annas a month, by instalments; if not repaid in four years the interest to be paid on the sum advanced was to be at 1 per cent. a month. In a suit after the four years had elapsed to recover the loan with interest, the Courts below held that the stipulation as to the higher percentage was a penalty, and refused to give interest at that rate. On special appeal the High Court reversed their decisions and allowed interest at 1 per cent. per mensem. **PEETAMBUR CHATTERJEE v. KALEECHURN ROY** - - - xi 187 note

16. — Where interest at Rs. 2-8 per month was stipulated for in a bond, and it was objected in a suit on the bond that the rate was exorbitant, it was *held*, the Court was justified in giving interest at that rate up to date of decree, that being the agreement between the parties at the time of making the contract. After decree, 12 per cent. per annum was given. **RASHESUR SURMAH v. KALEERANATH SURMAH** - - - xi 188 note

17. — In a bond executed by the defendant in favour of the plaintiff it was stipulated that a loan should bear interest at Rs. 1-8 per mensem for three months, when the principal and interest were to be repaid, and in the event of its not being then repaid, an enhanced rate of interest at 5 per cent. per mensem should be payable from the date of the execution of the bond to payment. A decree was given in a suit on the bond in accordance with the terms thereof, and on appeal to the High Court on the ground that the stipulation for interest at 5 per cent. per mensem was a penalty, and would not be enforced, the Court dismissed the appeal with costs. **SOHODEA BIBEE v. DEENDYAL LAL** - - - xi 188 note

18. — *Instalments — Penalty—Liquidated damages.*] A. executed an instalment-bond for Rs. 1,000, in favour of B., in which he stipulated that from the year 1271 (1864) to 1275 (1868), both inclusive, Rs. 200 should be paid in the month of Jaishta (May 13 to June 12) in each year, and that "in the event of any instalment being then due, all the remaining instalments should be deemed lapsed, and the principal should be paid with interest at the rate of 10 per cent. *per mensem*, from the date of the instalment-bond." The first instalment, which fell due on the last day of Jaishta, 1271 (12th June, 1864), was paid only on the 18th Falgun of the same year (13th February, 1866), other instalments were paid in Jaishta 1272, 1273 (1865, 1866). B. accepted payment of these instalments as part of payment of the principal sum due to him, and never made any demand for interest under the terms of the

INTEREST—continued.

bond. The further instalments due in Jaishta 1274 and 1275 (May 13th to June 12th, 1867 and 1868), were never paid. On 13th Kartic, 1275 (30th October, 1868), B. sold the bond and all his interest thereunder to C. for Rs. 800. On 2nd Jaishta, 1276 (14th May, 1868), C. brought a suit against A. for the whole amount of the bond with interest thereon at 10 per cent. *per mensem*, from the date thereof till the date of suit—namely, Rs. 6,099. less the amount Rs. 600, which had been realized by B. in the three instalments for 1271, 1272, and 1273 (1864, 1865, and 1866). The Judge awarded him only the amounts of the unpaid instalments for 1274 and 1275 (1867 and 1868), namely, Rs. 400, with interest from the date of the instalments till date of suit at one per cent. *per mensem*, in all Rs. 488 odd, proportionate costs and interest on all at one per cent. *per mensem* till date of realization. On appeal to the High Court by C., *held* that the clause in the bond relied on was a mere penalty clause. The original obligee of the bond having waived the exaction of any penalty, C. was not entitled to more than the Judge had awarded him. **BOLEY DOBEY v. SIDESWAR RAO BABOO ROY KUR** - - - iv Ap. 92

19. — *Stipulation in bond—Penalty.*] A bond stipulated that the loan secured thereby should be payable in five months with interest at 2 per cent. per month, and if not then repaid, interest at 5 per cent. per month should be charged. In a suit on the bond in default being made in payment, the defendant pleaded that the higher rate of interest stipulated for in the bond could not be enforced as being contrary to Hindu law, and in the nature of a penalty. *Held*, that the Court was bound to give effect to the contract entered into by the parties, and would not therefore look on the higher rate of interest as a penalty. **BROJOKISHORE ROY v. MADHUB PERSAD MISSEB**, [xii 456 note

IN THE MATTER OF NOBO COOMAR BOSE,

[xii 457 note

20. — A *kabuliat* contained a clause that "in default of a *kist*, that is failing to pay the *malguzari* on the day fixed for (paying) instalments, I shall pay the *zemindar's malguzari* with half as much again." In a suit for arrears of rent due under the *kabuliat*. *Held* that the stipulation to pay half as much again, i. e., interest at 50 per cent., was in the nature of a penalty which the Court would not enforce, and interest was given at the ordinary rate. **HURBULLUBH NARAIN SINGH v. GENDA MAHARAJ** - - - xii 473 note

INTEREST, DISCRETION OF COURT IN ALLOWING.

See SPECIAL APPEAL.

INTEREST ON AMOUNT OF APPEAL.

See BENG. CIVIL COURTS ACT, s. 22.

INTEREST, RECEIPT OF, IN ADVANCE.

See PRINCIPAL AND SURETY.

INTERPLEADER SUIT.

See BAILMENT.

INTERVENOR.

See ACT X OF 1859, s. 77.
CIVIL PROCEDURE CODE, s. 73.
ONUS PROBANDI.

INTESTACY, SUIT FOR DISTRIBUTIVE SHARE UNDER.

See PARTIES.

INTOXICATION—*Offence committed under.*] Intoxication should not be treated as an aggravation of an offence. *QUEEN v. ZULFUKAR KHAN* - - - - - viii Ap. 21

IRONICAL PUBLICATION.

See LIBEL.

IRREGULARITY IN CRIMINAL PROCEEDINGS.

See COMPLAINT.

ISAMNAWISI PAPERS.

See EVIDENCE.
VENDOR AND PURCHASER.

ISLAND FORMED IN NAVIGABLE RIVER.

See ACCRETION.
ACT IX OF 1847.

ISSUES—*Procedure, Act X of 1859, s. 65.*] *A.* sued *B.* for enhancement of rent at a rate specified, but at the trial failing to prove that proper notice had been served upon *B.* he claimed only rent at the rate formerly paid. No issue was recorded as to what the former rate had been, until the last day of hearing, after both parties and several of the witnesses had been examined in respect of the issues originally recorded; and the Collector without adjourning the case for trial upon such issue, having examined two witnesses who remained for examination, gave judgment in the case. *Held* that, under section 65 of Act X of 1859, the case ought to have been adjourned, and a convenient day fixed for trial upon the new issue. Case remanded accordingly. *SRI HARI MANDAL v. JADUNATH GHOSE*, i A. C. 110

2. — *Remand of case—Civil Procedure Code, s. 351.*] In a suit for maintenance, where the objection was taken on appeal to the Privy Council, that no issues had been directed in the Courts below,—*Held*, that an order of the High Court, referring the matter to the lower Court for enquiry, "to ascertain the amount of maintenance which might appear to be justly and properly payable, with reference to the means of the defendants and the other facts of the case, and to proceed to decision in the manner indicated in section 351 of the Civil Procedure Code," was equivalent to a direction of issues, and rendered any further issues unnecessary. *KACHEKALYANA RUNGAPPA KALAKKA TOLA UDIAR v. KACHIVIGAJAYA RUNGAPPA KALAKKA TOLA UDIAR*, [ii P. C. 73]

3. — *Special appeal—New issues.*] A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Courts below, and to raise altogether a new issue. *SHIUDAS NARAYAN SING v. BHAGWAN DUTT* - - - - - ii Ap. 15

4. — *Raising issue not raised by plaint and written statement.*] Where a plaintiff fails to

ISSUES—continued.

show that a mortgage, created by certain persons as executrix and executors of a Hindu will, has been validly created by them in that capacity, the Court will, unless it is manifestly inequitable to do so, allow him to raise an issue that the mortgage was validly created by the parties in another character. *NILKANT CHATTERJEE v. PEARI MOHAN DAS* - iii O. C. 7

5. — *Raising issue different from that arising on pleadings.*] Where the son of the son first adopted sued as heir of the second adopted son to obtain the property left by him, and the suit throughout was contested with respect to his claim as heir of that second adopted son: *held*, the plaintiff could not, on appeal, shift his ground and regard the second adopted son as a trespasser, and seek to recover the property on the ground of its having belonged to the ancestor. *GOPEE LOUL v. SREE CHUNDRA-OLEE BUHOJEE* - - - - - xi P. C. 391

6. — *Raising issues at hearing of suit not raised in pleadings—Suit for declaration of title.*] On the evidence, the defendant wished to raise issues as to the unchastity and inability of the plaintiff to succeed, and as to her suing on behalf of another person, not having alleged that she was doing so, neither of which matters were referred to in his written statement; but leave to raise them was refused, and the Court held that the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favor. *SWARNAMAYI RAUR v. SRINIBASH KOYAL* - - - - - vi 144

7. — *Omission to settle issues, ground for new trial.*] Where, on an appeal, the counsel for the appellant admitted he could not succeed on the merits, as the evidence stood on the record, and their Lordships were of opinion that substantial justice had been done, the mere omission to settle issues by the Court of first instance, which was not made a ground of appeal to the first Court of appeal, but was noticed and commented on by that Court, was *held* not to constitute a fatal mis-trial of the cause so as to render a new trial necessary. *Remun Pershad v. Jankee Pershad* (11 Moore's I. A. 26) commented on. *MITNA v. SYAD FUZLRUB* - - - - - vi P. C. 148

ISSUES, AMENDING.

See PLAINT.

ISSUES NOT RAISED BY PLEADINGS, FRAMING.

See DECLARATORY DECREE, SUIT FOR.

ISTEMRARI TENURES.

See PATTI, CONSTRUCTION OF.

JAGHIR.

See RESUMPTION.

JAILOR, SIGNATURE OF.

See PRISONERS' TESTIMONY ACT.

JAIN LAW.

See HINDU LAW, INHERITANCE.

JALKAR—*Right of Fishery—Incorporeal hereditament.*] *Jalkar*, or the right of fishery, may

JALKAR—continued.

exist in India as an incorporeal hereditament, and as a right to be exercised upon the land of another. *FORBES v. MEER MAHOMED HOSSEIN*, [xii P. C. 210]

JOINDER OF CAUSES OF ACTION.

See CIVIL PROCEDURE CODE, s. 8.
MULTIFARIOUSNESS.

JOINT CHARGE.

See REVISION.

JOINT DEBTS.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 16.

JOINT DECREE.

See CIVIL PROCEDURE CODE, s. 207.
EXECUTION OF DECREE.
LIMITATION ACT XIV OF 1859, s. 20.

JOINT FAMILY.

See HINDU LAW, JOINT FAMILY.

JOINT FAMILY, MORTGAGE BY MEMBER OF.

See LIMITATION ACT XIV OF 1859, s. 5.

JOINT FAMILY, PURCHASE BY MANAGER OF.

See ACT I OF 1845.

JOINT FAMILY, SUIT BY MEMBER OF, FOR CONTRIBUTION.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 16.

JOINT FAMILY PROPERTY.

See EXECUTION OF DECREE.

JOINT FAMILY PROPERTY, SUIT FOR SHARE OF.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 13.

JOINT HINDU FAMILY.

See HINDU LAW, JOINT FAMILY.

JOINT PROPERTY.

See CO-SHARERS.

JUDGE.

See LAND ACQUISITION ACT.
WITNESS.

JUDGE, DISCRETION OF.

See CERTIFICATE OF ADMINISTRATION.
CONFESSION OF JUDGMENT.
REVISION.
SUMMONS.

JUDGE OF HIGH COURT, APPELLATE SIDE, POWER OF.

See APPEAL IN CRIMINAL CASES.
REG. V OF 1812, s. 26.

JUDGE OF HIGH COURT, ORIGINAL SIDE, POWER OF.

See CERTIFICATE OF ADMINISTRATION.
SUPERINTENDENCE OF HIGH COURT.

JUDGE OF MOFUSSIL SMALL CAUSE COURT.

See CIVIL PROCEDURE CODE, s. 78.
REVIEW.

JUDGMENT.

See LETTERS PATENT, CL. 15.

JUDGMENT, COPY OF, DEDUCTION OF TIME NECESSARY FOR OBTAINING.

See LIMITATION ACT IX OF 1871, s. 13.

JUDGMENT, DELIVERY OF, IN COURT.

See CIVIL PROCEDURE CODE, s. 359.

JUDGMENT, IMPROPER RECORD OF.

See CIVIL PROCEDURE CODE, s. 359.

JUDGMENT IN REM.

See ESTOPPEL.

RES-JUDICATA.

2. — *Evidence — Disputed succession to raj.*] In a case of disputed succession to a raj, A., one son of the Raja, deceased, was put into possession under Act XIX of 1841, and a suit brought against him on behalf of another infant son B., failed on proof of the legitimacy of A. A third son C. now claimed to be entitled against A.'s son, on the ground that A. was illegitimate, or was the offspring of an inferior marriage. *Held*, the decree in the former suit was not a bar to the further prosecution of this suit, nor would it have been had the issues in the two suits been precisely the same. *Quare*.— Does there exist in India (exclusive of the particular jurisdictions which are exercised by the High Courts in matters of probate and the like, and which in the case of war might be exercised in matters of prize) any Court capable of giving a judgment *in rem*? *JOGENDBRO DEB ROY KUT v. FUNINDRO DEB ROY KUT* — — — — — xi P. C. 244

3. — *Mofussil Courts — High Court — Evidence.*] In a suit by R. C. against D., the widow of R. N., to set aside alienations by D. and to establish his title as reversionary heir to the property left by R. N., on the ground that R. N. had been adopted by J. L., deceased, and that, on the death of R. N. without issue, the right accrued to R. C. as an agnate of J. L., it was found that R. N. had been adopted by J. L. and that R. C. was reversionary heir. In a subsequent suit by K. L. against R. C. for a declaration of his right as heir to R. N., and for possession of the property on the ground that R. N. had not been adopted by, but took the property by gift from, J. L., *held*, that the judgment in the former suit was not admissible in evidence on the question of the adoption. *Semble*.— There are no judgments *in rem* in the mofussil Courts; and, as a general rule, decrees in those Courts are not admissible against strangers, to prove the truth of any matter directly or indirectly determined by the judgment, or by the finding upon any issue raised in the suit, whether relating to status, property, or any other matter. *KANHYA LALL v. RADHA CHURN* — — — — — Sup. Vol. 662

4. — *Evidence.*] The plaintiff sued to set aside a decree which had been obtained against a co-sharer on a mokurari patta. The decree which declared the patta to be a forgery, was in a suit to which the plaintiff was no party. *Held*, the decree did not

JUDGMENT IN REM—continued.

operate as a judgment *in rem*. **GUNGADHUR ROY v. WOOMA SOONDERKE DOSSEE.**

[Sup. Vol. 672]

See **LALA RANGLAL v. DEONARAYAN TEWARY** [vi 69]

JUDGMENT, REVERSAL OF.

See **APPELLATE COURT.**

JUDGMENTS—*Copies of, delay in furnishing—Civil Procedure Code, s. 198—Resolution of [High Court, 6th July, 1872]* The plaintiff applied for the admission of a special appeal, and his application was refused on the ground that the time for the admission of the appeal had expired. It appeared that he had applied for a copy of the judgment and decree, but had been refused, as he had not put in a sufficient quantity of blank papers for copies. On appeal to the High Court, *held*, the judicial officer was not justified in delaying the giving of copies until blank papers were put in. Such copies, by s. 198 of Act VIII of 1859, and a resolution of the Court of 6th July, 1872, are to be issued on production of the necessary stamps. **NILMONEY SINGH v. CHINIBAS MAHANTI** - - - - - xii Ap. 8

2. — *Memoranda of opinions—Resignation or death of Judge before judgment.* *Held per totam curiam.*—Written opinions sent to the Registrar by Judges who had retired or died before the judgment in the case was pronounced in open Court, are not judgments, but merely memoranda of the opinions and arguments of such Judges. **MAHOMED AKIL v. ASADUNNISSA BIBEE; MUTTY LALL SEN GWYAL v. DESKHAR ROY** - - - Sup. Vol. 774

JUDICIAL ACT.

See **ACT XVIII OF 1850.**

JUDICIAL COMMISSIONER OF PUNJAB, CIRCULAR ORDERS PASSED BY.

See **INDIAN COUNCILS' ACT.**

JUDICIAL COMMISSIONER, POWER OF.

See **JURISDICTION OF CRIMINAL COURTS.**

JUDICIAL NOTICE.

See **PRISONER'S TESTIMONY ACT.**

2. — *Justice of the Peace—Case sent up to High Court.* Where *R.* had tried a case and sent it up to the High Court, but it did not appear whether he had done so in his capacity of a Magistrate or of a Justice of the Peace, *—Semble*, the High Court was bound to take judicial notice that *R.* was a Justice of the Peace for Bengal. **QUEEN v. NABADWIP GOSWAMI** - - - - - i O. Cr. 15

JUDICIAL OFFICER, CHARGE BY, FOR EXECUTING COMMISSION.

See **COMMISSION.**

JUDICIAL ORDER.

See **NUISANCE.**

JUDICIAL SEPARATION, SUIT FOR.

See **DIVORCE ACT.**

JUMMABANDI PAPERS.

See **EVIDENCE.**

JURISDICTION.

See **CAUSE OF ACTION.**

CIVIL PROCEDURE CODE, ss. 5, 8, 14, 229, AND 284.

EXECUTION OF DECREE

INSOLVENCY.

INSOLVENT ACT, s. 5.

LETTERS OF ADMINISTRATION.

LETTERS PATENT, CL. 12.

LUNATIC.

MANDAMUS.

SMALL CAUSE COURT.

VALUATION OF SUIT.

2. — *Question of—Objection taken for first time in appeal.* The question of jurisdiction cannot be raised in appeal for the first time, unless it appear upon the face of the pleadings or the admission of the parties, or upon the evidence, that the suit will not lie. Where it did not appear on the face of the pleadings, or on the evidence, under what kind of *bastu* the land in dispute falls,—and no plea to the jurisdiction of the Court under Act X of 1859 had been taken in the Courts below, the High Court will not remand the case to enquire under which class of *bastu* land the subject-matter of suit falls, or entertain the point of jurisdiction in appeal. **NAIMUDDA JOWARDAR v. MONCRIEFF** - - - - - iii A. C. 283

3. — *Held* by **MARKBY, J.**, that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favor of the jurisdiction of the Courts below. **ROOKE v. PYARI LAL** - - - - - iv Ap. 43

4. — The Court will take notice of a question affecting its jurisdiction even when urged for the first time on appeal after remand. **CHOWDREY WAHID ALI v. MULICK INAYET ALI.** [vi 53]

JURISDICTION, ADMIRALTY—24 Vict., c. 10 (*Admiralty Act, 1861*)—26 Vict., c. 24 (*Admiralty Act, 1863*).] 24 Vict., c. 10 (*The Admiralty Act, 1861*) and 26 Vict., c. 24 (*The Vice-Admiralty Act, 1863*) extend to India. The High Court, as constituted by the Charter of 1862, had not, by virtue of the Admiralty Act 1861 or otherwise, any jurisdiction over claims for disbursements by the master. But after the passing of the Charter of 1865, the Vice-Admiralty Act 1863 applied to the High Court, as being "a Vice-Admiralty Court established after the passing of that Act in a British possession." *Held*, therefore, that the High Court had jurisdiction, as a Vice-Admiralty Court, to entertain the claim of the master for wages and disbursements on account of the ship. **IN THE MATTER OF THE SHIP PORTUGAL** - - - - - vi 323

JURISDICTION, MATRIMONIAL.

See **DIVORCE ACT.**

JURISDICTION, MUNICIPAL COURTS.

See **ACT OF STATE.**

JURISDICTION OF CIVIL COURT.

See ABATEMENT OF RENT.

ACT X OF 1859, s. 25.

BENG. ACT III OF 1870.

DECLARATORY DECREE, SUIT FOR JURISDICTION OF REVENUE COURT.

LIMITATION ACT XIV OF 1859, s. 1, CLS. 1 & 14.

PARTITION.

SMALL CAUSE COURT, MOFUSSIL.

2. — *Suit to recover possession of land added to estate paying revenue directly to Government—Act IX of 1847, ss. 6 & 9.* No suit will lie in a Civil Court to recover possession of lands which have been added to an estate paying revenue directly to Government by the Revenue Authorities after an inspection of maps under s. 6 of Act IX of 1847, although such lands have re-formed on an old site of land belonging to another. *DEWAN RAMJEWAN SINGH v. COLLECTOR OF SHAHABAD* — — — — — xiv 221 note

3. — *Suit for damages against Political Agent at Court of Modhool—24 & 25 Vict., c. 104, s. 9—Letters Patent, cl. 13.* In a suit brought in the High Court at Bombay by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent, at the Court of Modhool, for damages for injury done to them by certain orders made by him in his executive capacity, *held*, even assuming there was a cause of action, the High Court had no jurisdiction to try it either under s. 9, 24 & 25 Vict., c. 104, as a Court of ordinary original civil jurisdiction, or in its extraordinary civil jurisdiction under s. 13 of the Letters Patent. *INHABITANTS OF MAHALINGPORE v. ANDERSON*, [vii 452 note

4. — *Partition—Suit for declaration of right to share.* There is nothing in the batwarra law or in any other regulation to prevent the Civil Court from entertaining a suit for the declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. *SPENCER v. PUHUL CHOWDREY; SPENCER v. SHEIKH KADIR BUKSH* — — — — — vi 668

See *AHMEDULLA v. ASHEUFF HOSSEIN*, [viii Ap. 78 note]

5. — *Ferry—Resumption by Government—Compensation—Civil Procedure Code, s. 1.* A suit for compensation for the loss sustained by reason of the resumption by Government under Reg. VI of 1809, of a ferry, is not cognizable by the Civil Courts. *COLLECTOR OF PUBNA v. ROMANATH TAGORE; MAGISTRATE OF MALDAH v. GOLEBUNNESSA*, [Sup. Vol. 630

6. — *Contract—Suit for share of fees received by Hindu priest.* The plaintiffs sued the defendants in the Civil Court for a declaration of their right by contract to share in the ministrations at a certain ghat, and to recover a sum of Rs. 75-9 as their share, under the contract, of moneys received by the

JURISDICTION OF CIVIL COURT—continued.

defendants at that ghat. *Held*, the suit would lie. *MAGJU PANDAEN v. RAMDYAL TEWARI*, [viii 50

BECHARAM BANERJEE v. THAKURMANI DEBI — — — — — viii 53 note

7. — *Suit to have a Hindu marriage declared invalid.* A suit to have a Hindu marriage declared invalid, or otherwise, where no rights of property depend on the validity or invalidity of the marriage, cannot be maintained in the Civil Courts under Act VIII of 1859. *RAMSARAN MITTER v. RAKHAL DASS DUTT* — — — — — vi 244 note

8. — *Suit to declare Hindu marriage invalid.* A suit for a declaration that an alleged Hindu marriage is invalid, is a suit of a civil nature, and will lie in the ordinary Civil Courts. *AUNJONA DAS v. PRAHLAD CHANDRA GHOSE* — — — — — vi 243

9. — *Suit to have windows closed—Invasion of privacy of women.* The defendants having opened certain windows and erected a verandah in their house which commanded a view of the plaintiffs' female apartments, the plaintiffs brought a suit against them to have the windows closed and the verandah removed. *Held*, that no such suit was maintainable. *MAHOMED ABDUR RAHIM v. BIRJU SAHU* — — — — — v 676

10. — In a suit to compel the defendant to remove certain windows in his house which overlooked the apartments occupied by the females of the plaintiff's household, *held*, that the plaintiff was not entitled to have them closed. *RAMLAL v. MAHES BABOO* v 677 note

11. — A suit to close doors recently opened in the house of a neighbour, on the ground that such doors overlook the zenana or female apartments of the plaintiff, does not lie. *GOLAM ALI v. KAZI MAHOMED ZAHUR ALUM*, [vi Ap. 76

See *GIBBON v. ABDUR RAHMAN KHAN*, [iii A. C. 411

12. — *Suit for damages—Abuse.* A suit will lie in the Civil Court to recover damages for abuse. *KALI KUMAR MITTER v. RAMGATI BHUTTACHARJI* — — — — — vi Ap. 99

13. — *Contract—Consideration—Promise by brother to give sister in marriage.* A certain amount of money had been paid by a Hindu to another in consideration of a promise by the latter that he would give his sister in marriage to the former. The girl's mother was alive. In a suit for recovery of the amount on the ground that the latter had failed to fulfil his promise, *held*, that the suit would lie. *JOGESWAR CHAKRABATTI v. PANCH KAURI CHAKRABATTI* — — — — — v 895

14. — *Suit to set aside order of Magistrate under s. 308, Code of Criminal Procedure (Act XXV of 1861)—Nuisance.* No suit will lie in a Civil Court to set aside an order duly made by a Magistrate under Chapter XX, s. 308 of the Code of Criminal Procedure, relating to nuisances, or to restrain him from

JURISDICTION OF CIVIL COURT—continued.

carrying such order into effect. *UJALAMAYI DAS v. CHANDRA KUMAR NEOGI* iv F. B. 24

15. — *Criminal Procedure Code (Act VIII of 1869), ss. 308—310, 311—Removal of house by order of Magistrate—Suit for possession and for damages.* A Magistrate issued an order under s. 308 of Act VIII of 1869, calling upon A. to remove his hut as being an obstruction to a public highway. A. claimed a jury under s. 310, the majority of whom found that the Magistrate's order was reasonable and proper. A. refused to obey the order, and his hut was removed under s. 311. A. sued the Magistrate for possession of the land and for damages. *Held*, that such suit would not lie. *MEECHOO CHUNDER SARGAR v. RAVENSHAW* — xi 9

16. — *Obstructing public road—Criminal Procedure Code (Act XXV of 1861), ss. 308 & 320.* Under s. 308 of the Criminal Procedure Code, an order was obtained by the defendant from the Magistrate of a district declaring a road to be a public road. The present suit was brought by the plaintiff to set aside that order, and for an order that the road be closed. *Held*, the Civil Court had no jurisdiction to entertain the suit. *ROOKE v. PYARI LAL*, [iii Ap. 43]

17. — *Obstructing public road—Criminal Procedure Code (Act XXV of 1861), s. 320.* A Magistrate found, under s. 320 of Criminal Procedure Code, on a dispute between R. and P. that the public had been in the habit of using a certain road over P.'s land, for carts, &c., and accordingly directed it to be opened (i. e., by removal of obstructions). P. brought a regular suit against R. in which the issue was, whether the road was public or not: this was found in the negative, except as to a footpath; costs were apportioned, and the cart-way was ordered to be stopped. R. appealed on the merits, and P. filed a cross-objection: the first judgment was affirmed. On special appeal by R. (as to the mode of dealing with the proofs), *held*, the finding of the Civil Court was beyond its competence, and the suit was not such as contemplated by s. 320, viz., to test the right of "exclusive possession." *PYARI LAL v. ROOKE*, [iii A. C. 305]

18. — *Suit for closing a new road and opening old one.* In a suit for closing a new road opened by the defendant through the land of the plaintiff, and for opening an old road which had been closed by the defendants, *held per MARKBY, J.*, that the question of opening and closing a public road belongs to the Criminal Court. The Civil Court had no jurisdiction to entertain the suit. *HIRA CHAND BANERJEE v. SHAMA CHARAN CHATTERJEE* iii A. C. 351

19. — *Obstructing public road, suit for.* A suit will not lie for obstructing a public road without showing any particular inconvenience to the plaintiff in consequence of such obstruction. A donor does not, by dedicating a thing to the public, necessarily become a guardian of the public *quoad* that thing. *BARODA PRASAD MOSTAFI v. GORA CHAND MOSTAFI*, [iii A. C. 295]

JURISDICTION OF CIVIL COURT—continued.

20. — *Suit for declaration of right of way—Special damage.* A suit for declaration of right of way by a public road will not lie, where there is no allegation of special injury or inconvenience to the plaintiff. *RAMTARAK KARATI v. DINANATH MANDAL* — vii 184

21. — No suit lies for obstructing a public road, unless the plaintiff can show that he has suffered particular inconvenience from such obstruction. *PARBATI CHARAN MUKHOPADHYA v. KALINATH MUKHOPADHYA* — vi Ap. 73

22. — *Suit by unregistered holder to set aside sale of under-tenure.* The holder of an under-tenure, though his name has not been registered as the owner, may bring a suit to set aside a sale of the under-tenure made in execution of a decree for rent against the former holder, on the ground that the money due under the decree had been deposited before the sale. *AFZAL ALI v. LALA GAURNARAYAN*, [Sup. Vol. 519]

23. — *Act X of 1859, s. 105—Suit to set aside sale in execution of decree—Fraud.* The Civil Court has jurisdiction to entertain a suit instituted by A. to set aside a sale of his tenure under s. 105 of Act X of 1859, on the ground that the sale was held under a decree obtained fraudulently against B., who was not the real owner. *RAMSUNDAR PORAMANICK v. PRASANNA KUMAR BOSE* — Sup. Vol. 382

24. — *Suit to set aside sale of under-tenure under Act X of 1859.* The purchaser of an under-tenure may sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent under Act X of 1859, on the ground that such decree was obtained by fraud subsequently to his purchase. *GUNGA DOSS DUTT v. RAMNARAIN GHOSE*, [Sup. Vol. 625]

25. — *Suit for money paid as rent.* The plaintiff sued to recover money which she had paid as rent to the zemindar, under a decree of the Revenue Court, after she had already paid her rent to his gomasta. *Held*, that the suit was not cognizable by the Civil Court. *SAUDAMINI DAS v. THAKOMANI DEBI* — iii Ap. 114

26. — *Suit to set aside revenue sale.* An action lies in the Civil Court to set aside a purchase fraudulently made at a sale in execution of a decree of a Revenue Court which had been obtained by fraud. *NILMANI BURNICK v. PUDDO LOCHAN CHUCKERBUTTY*, [Sup. Vol. 379]

27. — *Suit to reverse order of Revenue Court.* Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts. *NANKU ROY v. MAHABIR PRASAD*, [iii Ap. 35]

28. — *Suit to set aside order of Revenue Court—Act XI of 1859, s. 11.* The plaintiff and A. and B. were joint owners of an estate paying revenue to Government. The names of A. and B. were alone recorded in the

JURISDICTION OF CIVIL COURT—continued.

rent-roll of the Collector. *A. and B. alienated certain specific portions of the lands of the estate to their wives, and applied to the Collector, under s. 11 of Act XI of 1859, to open a separate account for payment of the proportionate share of the revenue payable in respect of the lands so alienated. The plaintiff objected to such separation, on the ground that the lands had never been divided, but always held ijmali, and that A. and B. claimed a larger share than they owned; but his objection was rejected by the Collector on the ground that he was not a recorded proprietor, and the application of A. and B. was granted. The plaintiff now sued in the Civil Court for a declaration of the extent of his share in the joint estate, and to have the order of the Collector set aside. Held, that the Civil Court had jurisdiction to entertain such a suit, and that it was not necessary to make the Collector a party.* *HARGOBIND DAS v. BARODA PRASAD DAS* - - - - - vi 614

*MADAN MOHAN MAZUMDAR v. BAISTAB CHANDRA MANDAL and PURNA CHANDRA GAN-
GULI v. MADAN MOHAN MAZUMDAR,*

[vi 617 note

29. — *Suit for execution of decree in summary suit for rent.*] A regular suit to enforce a decree obtained in a summary suit for rent, which the Revenue Court has refused to execute upon the ground that it has been satisfied, cannot be maintained in the Civil Court (STEEB, J., dissenting). *ANANDA MAYI DAS v. PATIT PABUNI DAS* - - - Sup. Vol. 18

30. — *Costs of partition—Order of Collector for payment of proportionate share of costs by co-sharers—Suit to set aside sale.*] The Civil Court decreed partition (batwarra) of an estate in a suit brought by some of the co-sharers in the estate, and ordered the plaintiffs to pay the costs of the partition. The Collector, however, called upon the defendants, the other co-sharers, to pay a portion of the fees to the Ameen who effected the partition, namely, in proportion to the shares allotted to them by the decree: and in default of payment of the whole of such portion he sold the defendants' shares in the estate. *Held*, that the Collector acted *ultra vires*, and a suit was maintainable in a Civil Court to set aside the sale and for recovery of the property. *BAIJ-NATH SAHU v. LALLA SITAL PRASAD* ii F. B. 1

31. — The Civil Court has jurisdiction to entertain a suit by a judgment-debtor under a decree of the Revenue Court, for confirmation of his right in immoveable property sold by his execution-creditor under an order of the Revenue Court for the sale of the rights and benefits of the judgment-debtor in the suit in which the order was made, and for a declaration that the sale was void. *CHANDRAKANT BHAT-TACHARJ v. JADUPATI CHATTERJI* i A. C. 177

32. — *Suit to set aside sale for arrears of rent—Act X of 1859, s. 105—Fraud.*] A Civil Court has jurisdiction to entertain a suit by a tenant to recover possession of a tenure from

JURISDICTION OF CIVIL COURT—continued.

an auction-purchaser at a sale for arrears of rent under s. 105 of Act X of 1859, although there is no allegation of fraud, the tenant not having been a party to the decree for arrears of rent. *MEAH JAN MUNSHI v. KURRUNA-MAYI DEBI* - - - - - viii 1

33. — *Suit for possession against alleged trespasser, who sets up a permanent ryoti tenure.*] A Civil Court alone has jurisdiction to try a suit which is brought to recover possession of lands with mesne profits from one who is alleged to be in possession as a trespasser, notwithstanding the defence set up is that in respect of part of the land the defendant has a permanent ryoti-tenure. *HARI NATH DAS v. ASMUT ALI* - - - vi Ap. 118

34. — *Act X of 1859, s. 27.*] The right given by s. 27 of Act X of 1859 to the transferee of a permanent transferable interest in land to have his name registered in the sherista of the zemindar in the place of that of his vendor, is a right of a civil nature; and therefore the Civil Courts have cognizance of all suits necessary for the purpose of enforcing such right. The jurisdiction of the Collector is not exclusive, but concurrent. *MADHUB CHUNDER PAL v. HILLS* - - - i A. C. 176

35. — *Suit for possession of land.*] In a suit in the Civil Court to recover possession of lands which the plaintiff alleged he had leased to the defendant as manager of an indigo factory, and also of other lands over which he had given a zur-i-peahgi lease,—*held*, that the suit was rightly brought in the Civil Court, and that the Revenue Court had no jurisdiction. *MACDONALD v. RAJARAM ROY*, iii Ap. 28

36. — *Suit to eject ryot—Act X of 1859, s. 23, cl. 5.*] A suit by a zemindar to eject a ryot who holds on after the period of his lease, is cognizable by the Civil Court, and not under cl. 5, s. 23, Act X of 1859, by the Collector. *SADAT ALI v. SADATTUNISSA* - - - iii Ap. 101

37. — *Suit for declaration of right to share in produce of trees—Act X of 1859, s. 23, cl. 6.*] A suit for the declaration of the right of the plaintiff to a share in the produce of certain trees, on the allegation that these trees were planted by a person whose rights had passed to the plaintiff by a bill of sale, is cognizable by the Civil Courts, and does not come within the meaning of cl. 6, s. 23 of Act X of 1859. *RAMZAN ALI v. ANWAR ALI*, [ii Ap. 19

38. — *Act X of 1859, s. 23, cl. 6—Suit for possession on declaration of title.*] The Civil Court has jurisdiction to entertain a suit by an under-tenant to establish his title and for possession notwithstanding cl. 6, s. 23, Act X of 1859. The words "suits to recover the occupancy or possession of any land" in that clause refer only to possessory actions against the person entitled to receive the rent, and not to suits in which the plaintiff sets out his title and seeks to have his right declared and possession given him in pursuance of that title.

JURISDICTION OF CIVIL COURT—continued.

GOOROODOSS ROY v. RAMNARAIN MITTER;
GOOROODOSS ROY v. BISHTOO CHURN BHUT-
TACHARJEE - - - - - Sup. Vol. 628

39. — *Act X of 1859, s. 28—Suit for re-
sumption of rent-free tenure.*] The plaintiff,
the purchaser of a patni lease, sought to ob-
tain a declaration of his mal right by setting
aside an alleged rent-free tenure in certain
lands which the defendant claimed to hold
under a lakhiraj title prior to 1765, or 1st
December, 1790. The plaint was filed in the
Collector's Court on 31st December, 1861, but
was referred to the Civil Court under Beng.
Act VII of 1862, and the plaintiff obtained a
decree in the lower Courts. *Held* by a majority
of the Court (TREVOR, SETON-KARR, and
GLOVER, JJ., dissenting), that the Civil Court
had jurisdiction to try the suit, notwithstanding
s. 28 of Act X of 1859. SONATAN GHOSE
v. ABDUL FARAB - - - - - Sup. Vol. 109

JURISDICTION OF CRIMINAL COURT.

*See OFFENCE COMMITTED ON THE
HIGH SEAS.*

*RECOGNIZANCE TO KEEP THE
PEACE.*

2. — *Presumption of jurisdiction—Objection to jurisdiction.*] The High Court being
a Court of superior jurisdiction, the want of
jurisdiction is not to be presumed, but the
contrary. Where the High Court had jurisdic-
tion to try a prisoner for the offence committed,
if a charge had been made against him by a
person authorized to make that charge, and
the prisoner pleaded not guilty,—*held*, that
proof need not be given that the officer had
authority to send up the charge. Objections
to the jurisdiction should be made before plead-
ing to the general issue. QUEEN v. NABADWIP
GOSWAMI - - - - - i O. Cr. 15

3. — *Resistance of process of Civil Court.*] The resistance of process of a Civil Court is
punishable, under the Code of Criminal Pro-
cedure, by a Court of criminal jurisdiction.
QUEEN v. BHAGAI DAFADAR - - - - - ii F. B. 21

4. — *Suit for closing new road and open-
ing old one.*] In a suit for closing a new
road opened by the defendants through the
land of the plaintiff, and for opening an old
road, which had been closed by the defendant,
—*held* by MARKBY, J., that the question of
opening or closing a public road belongs to
the Criminal Court, and not to the Civil Court.
HIRA CHAND BANERJEE v. SHAMA CHARAN
CHATTERJEE - - - - - iii A. C. 351

5. — *Power of Sessions Judge—False evi-
dence.*] The Sessions Judge has no power to
commit a man for having given false evidence
before the Magistrate, but he can commit him
for having given false evidence in his own
Court. QUEEN v. HARDYAL - - - - - iii A. Cr. 35

6. — *Power of Judicial Commissioner—
False evidence—Criminal Procedure Code (Act
XXV of 1861), s. 172.*] A Judicial Com-
missioner has no power, under s. 172 of the
Code of Criminal Procedure, to commit a wit-

JURISDICTION OF CRIMINAL COURT—contd.

ness for a false deposition given before the
Assistant Commissioner. QUEEN v. MATI
KHOWA - - - - - iii A. Cr. 36

7. — *Sessions Judge, power of—Offences
triable by Magistrate—Criminal Procedure
Code (Act VIII of 1869), s. 435.*] The Sessions
Judge has no jurisdiction to annul a convic-
tion and order a commitment for an offence
triable by a Magistrate. S. 485, Act VIII
of 1869, relates to offences triable by the Ses-
sions Judge. IN THE CASE OF WAZIR SING,
[iii A. Cr. 65]

8. — *Conviction by Magistrate for prac-
tising in Collector's Court without certificate—
Officer both Magistrate and Collector.*] Where
an officer is acting in two capacities, *viz.*, as
Assistant Collector and Assistant Magistrate,
he should not, in his capacity of Magistrate,
convict a person of an offence committed
before him as Collector: therefore, he has no
authority as Magistrate to fine a person under
s. 34, Act XX of 1865 for practising in his
Court as Collector without a certificate. IN
THE MATTER OF RAMDYAL SING v Ap. 89
See QUEEN v. HIRALAL DAS - - - - - viii F. B. 422

9. — *Sessions Judge—Offence under Reg-
istration Act (XX of 1866), s. 95.*] The Ses-
sions Judge has jurisdiction to try a case of
abetting false personation of a witness before
a Registrar of Assurances, under s. 95 of the
Registration Act XX of 1866. QUEEN v. SHEO-
GOLAM DAS - - - - - vi F. B. 692

10. — *European British Soldier—Jurisdic-
tion of Military Authorities—Regs. XX of
1825 and XIII of 1833—4 Geo. IV, c. 81.*] A British-born European soldier in a regiment
stationed at Hazaribagh was committed by
the Deputy Commissioner of that place to the
High Court on a charge of the murder of a
comrade. Upon an application to have the
commitment quashed and the prisoner handed
over to the Military Authorities in accordance
with Reg. XX of 1825, it was *held*, that
the provisions of Reg. XX of 1825 as
to the course to be taken in dealing with
European British subjects who have com-
mitted offences were rescinded in Hazaribagh
by Reg. XIII of 1833, s. 3, as being rules
for the administration of criminal justice
within the meaning of that section. Assum-
ing the Regulation was in force, *held* that,
4 Geo. IV, c. 81, and Reg. XX of 1825,
though they gave jurisdiction to the Military
Authorities in certain cases, did not wholly
exclude the jurisdiction of the Civil as opposed
to the Military Courts, and that inasmuch
as the proceedings before the Deputy Commis-
sioner had been taken at the request of the
Military Authorities and assented to by them,
such proceedings were not void, and the com-
mitment was valid. QUEEN v. JACKSON,
[xiii 474]

11. — *Criminal Procedure Code (Act X of
1872), s. 67, III. (a).*] Where an offence was
alleged to have been committed during a journey
from Bombay to Calcutta, and was in fact com-

JURISDICTION OF CRIMINAL COURT—contd.

mitted between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Calcutta by different trains, *held*, that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party. **QUEEN v. PIRAN** - - - - - *xiii Ap. 4*

12. — *European British subject—Criminal Procedure Code (Act X of 1872), ss. 71—88—Power of Indian legislature—24 & 25 Vict., c. 67 (Indian Councils' Act), ss. 22 and 42.* A European British subject in the mofussil was convicted by a Magistrate under the provisions of Ch. vii of Act X of 1872. He appealed to the High Court on the ground (*inter alia*) that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor-General in Council had not the power under 24 & 25 Vict., c. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and therefore the provisions of Act X of 1872, under which the prisoner had been tried, were *ultra vires* and illegal. *Held*, that the jurisdiction of the High Court as given by the Letters Patent is subject to the legislative powers of the Governor-General in Council, and, therefore, the Magistrate had jurisdiction to try the case. **QUEEN v. MEARES** - - - *xiv 106*

13. — *Charge of abetment of waging war against the Queen.* Where the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was *held* that the Court of Sessions at Patna had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the district of Patna in pursuance of the original concerted plan, and with reference to the common object. The Court of Patna had jurisdiction also, because the prisoner had sent money from Calcutta to Patna by hundis, and, until that money reached its destination, the sending continued on the part of the prisoner. **QUEEN v. AMEER KHAN**, [*x 36*]

JURISDICTION OF HIGH COURT, N. W. P.

See REGISTRATION ACT XX of 1866.

JURISDICTION OF REVENUE COURT.

See ABATEMENT OF RENT, SUIT FOR ENHANCEMENT OF RENT. JURISDICTION OF CIVIL COURT. RES-JUDICATA.

2. — *Civil suit for amount due under Act X decree.* J. K. D. instituted a suit before a Deputy Collector, under Act X of 1859, against L. N. R., for money due from the defendant as his gomasta. The parties, before judgment, filed a petition of compromise, according to which it was agreed that the amount admitted by L. N. R. to be due (Rs. 325)

JURISDICTION OF REVENUE COURT—contd.

should be paid by instalments, and it was stipulated that, on failure to pay any instalment, "the whole debt will be realized at once, and I" (L. N. R.) shall be charged interest at half "percent. per month and it is" "prayed that the case be disposed of according "to the above terms." The Deputy Collector decreed—"Let the case be disposed of in "accordance with the terms of the compromise." J. K. D. assigned his interest under that decree to R. M. D. L. N. R. failed to pay an instalment. R. M. D. then applied to the Deputy Collector to execute the decree for the whole amount with interest, but his application was refused. Thereupon, R. M. D. brought an action in the Civil Court against L. N. R. for the amount due with interest. *Held*, the suit would not lie in the Civil Court to recover the amount due under the Act X decree. The parties to the compromise contemplated that the whole amount and interest should be realized only by process of execution to be issued out of the Revenue Court, which was to be delayed till a failure to pay an instalment had taken place. On the refusal of the Deputy Collector to issue execution for the amount of the debt, the plaintiff should have appealed to the Commissioner. **RAM MOHAN DAS v. LAKHI NARAYAN ROY** - *iv A. C. 207*

3. — *Suit for rent of land covered with buildings.* A suit for the rent of land is not altered by the fact of houses or buildings standing thereon, and therefore such a suit is one cognizable by a Revenue Court under s. 23, Act X of 1859. **MATHURANATH KUNDU v. CAMPBELL** - - - - - *ix 116 note*

4. — The Revenue Courts have no jurisdiction to entertain a suit for rent of land with buildings upon it, when the rent includes the rent of the buildings as well as of the land. **DHIRAJ MAHATAB CHAND BAHADUR v. MAKUND BALLABH BOSE** - - - *ix Ap. 13*

5. — A suit for rent of lands where the rent comes from arhats, ghats, and bazars situated upon it, as well as from the land, will not lie in the Revenue Court, **HARI MOHAN SIKKAR v. MONCRIEFF** - - - *ix Ap. 14*
MADAN SING v. MADAN RAM DEB, *i S. N. xi*

6. — *Suit for rent of lands appurtenant to dwelling-house.* The defendant had been declared entitled under s. 9, Reg. XIX of 1814, to hold certain lands as attached to his dwelling-house, at an equitable rent payable to the landlord. The landlord subsequently sued in the Revenue Court for enhancement of rent of these lands. *Held*, that a suit for the rent of such lands could not be maintained in the Revenue Court. **SHAW KHAIRUDDIN AHMED v. ABDUL BAKI**, [*iii A. C. 65*]

7. — *Enhancement of rent of a dwelling-house in village.* A suit for enhancement of rent of a dwelling-house in a village is cognizable by the Collector. **ABDOOL HAMID v. DONAGRAM DEY** - - - - - *iii Ap. 138*

JURISDICTION OF REVENUE COURT—*contd.*

8. — *Deed of partition—Suit for arrears of rent—Title.*] A. died, leaving four sons, B., C., D., and E., by a wife deceased, and a widow K., and three other sons, F., G., and H., by her. K. brought a suit against B., C., D., and E., and against her three sons F., G., and H., to establish her title to a certain talook which she alleged had been conveyed to her by A. under a deed of gift. B., C., D., and E. set up a prior deed of partition, whereby the property of the deceased, including this talook, was divided between all his sons in the proportion of ten annas to B., C., D., and E., and six annas to F., G., and H. The High Court, on appeal, *held*, that the deed of partition was genuine, and rendered the subsequent deed of gift inoperative. Afterwards B., C., D., and E. instituted a suit in the Collector's Court for arrears of rent in respect of another talook also included in the deed of partition, against the ryots, and F., G., and H. The ryots admitted that they held at the rent claimed, but stated that they had not paid their rent on account of a dispute between the brothers as to the shares in which they were entitled to the same. F., G., and H. raised the defence that this suit could not be maintained in the Collector's Court: a suit in the Civil Court should be brought for the determination of their shares, and the decision in their prior suit was no evidence against them. *Held*, that the question was really one of title between the brothers, and such suit could not be maintained in the Revenue Courts. GIRISH CHANDRA ROY CHOWDHRY v. RAJ CHANDRA ROY CHOWDHRY, [ii A. C. 1]

9. — *Rent of stone quarries—Act X of 1859, s. 23, cl. 4.*] In a suit for rent under a lease of eight annas of a certain hill and of fourteen bigas of land, by which the lessee reserved a yearly rent of Rs. 200 for the land, and the right of levying a yearly tax on the parties who were employed in quarrying the stone,—*held*, that this was not a suit cognizable by the Revenue Courts under Act X of 1859. *Khalut Chunder Ghose v. Minto* (i I. J. N. S. 426) considered and approved. SHALGRAM v. MUSST. KUBIRUN — — iii A. C. 61

10. — *Act X of 1859, suit under, for arrears of rent—Benami lease.*] Some of the defendants had taken a lease in the benami name of C. P. B., and were in actual possession of, and had paid rent for, the lands demised. The other defendants were sureties for C. P. B. A suit was brought in the Court of the Deputy Collector against those who were actually in possession of the land, together with the sureties, for arrears of rent. It did not appear from the lease how far each defendant was interested in or entitled under it. *Held per* PEACOCK, C. J., whose opinion prevailed (MITTER, J., dissenting), that the Deputy Collector had no jurisdiction to enquire into matters extraneous to the lease, and that the plaintiff's suit ought to have been dismissed. *Held per* MITTER, J., that the suit was properly brought against the actual tenants, and not

JURISDICTION OF REVENUE COURT—*contd.*

against the benamidar and that the Collector had jurisdiction. *Held* by both Judges, that the suit should be dismissed as against the sureties, who could not, as such, be sued under Act X of 1859. ROY PRIYANATH CHOWDHRY v. BEPINBEHARI CHUCKERBUTTY ii A. C. 237

11. — *Suit for arrears of rent—Question relating to rent.*] In execution of a decree of the Revenue Court in a suit brought by K. for arrears of rent of a certain patni, the patni was put up for sale and purchased in the name of G. The rent having again fallen into arrear, K. took proceedings against G., under Reg. VIII of 1819, for the sale of the patni; but the arrears having been paid, the patni was not sold. In a suit for arrears of rent of the same patni, subsequently brought by K. against G., P., and B. (the wife of P.) jointly, on the allegation that the patni had been purchased by G. benami for P. and B., *held*, that the Collector had no jurisdiction to try questions relating to rent depending upon equitable rights and liabilities arising from circumstances other than those of the relationship of landlord and tenant. PROSONNO COOMAR PAL CHOWDHRY v. KOYLASH CHUNDER PAL CHOWDHRY — Sup. Vol. 759
PROSONNO COOMAR PAL CHOWDHRY v. MUDDUN MOHAN PAL CHOWDHRY,
[xi Ap. 31 note]

12. — *Benami lease—Landlord and tenant—Act X of 1859.*] A. brought a suit in the Collector's Court against B., C., D., and E., for arrears of rent in respect of land demised under a patta to F. He joined G. and H. as defendants. According to the terms of the patta they were sureties for F. It was admitted that F.'s name was used benami in the patta, and that he took no interest. A. sued B., C., D., and E. as the parties interested and in possession. C. objected that a new settlement had been made and a new patta granted; that he held a moiety only of the lands, and was not liable for more; and that D. was his ryot, and ought not, therefore, to have been made a defendant. D. and E. contended that they were liable in respect of the lot comprised under the patta, and had already paid rent for it to A. under a decree, but objected that they ought to have been sued separately from B. and C. did not appear. The lower Court held that C. had failed to make out his case, and that D. and E. were liable in this suit, and passed a decree ordering them to pay the amount admitted by them to be due from them, and the other defendants to pay the remainder of the claim. C. appealed. On the appeal, PEACOCK, C. J. (MITTER, J., *contra*) *held*, that the plaintiff's suit must be dismissed, the lease being to H., and not to the defendants; that the Court below had founded its decision on matters extraneous to the lease, which it had no jurisdiction to enquire into. C. appealed under s. 15 of the Letters Patent. *Held*, by KEMP and JACKSON, JJ., that the Collector had full jurisdiction to entertain the suit, which was properly brought against those who were in the

JURISDICTION OF REVENUE COURT—contd.

actual possession of the land, and that these persons were really the tenants; that the form of the decree passed by the Collector was correct, the plaintiff having consented to the decree being given in that form; that the sureties had really made themselves responsible for those who were really interested under the lease, and not for *F. Prasanna Kumar Pal Chowdry v. Kailash Chunder Pal Chowdry* distinguished. *Held* by NORMAN, J. (dissenting), that the terms of the lease under which *F.* was alone interested could not be contradicted by oral evidence; that *F.* alone was bound to the lessor under the lease; that the defendant could not be sued as tenant, unless subsequent to the patta and kabuliati something had occurred creating the relation of landlord and tenant between them and the lessor; that no such relation or any contract creating such relation between the parties could be implied from the circumstances of the case, and the suit should be dismissed. The Revenue Court had, therefore, no jurisdiction. But whether in the Revenue or Civil Court, *D.* and *E.* could not be sued jointly with *B.* and *C.*, nor could *G.* and *H.* *BIPINBEHARI CHOWDARY v. RAM CHANDRA ROY* - - - v 234

13. — *Suit for damages—Wrongful distraint—Act X of 1859, s. 143.* A suit for recovery of damages, by reason of wrongful distraint, is not cognizable by the Civil Court, but is cognizable by the Collector under s. 143, Act X of 1859. *RAM CHANDRA CHOWDARY v. SUBAL PATRO* - - - iii Ap. 74

14. — *Wrongful distraint of crops—Suit for damages.* Certain sub-lessees sued in the Collector's Court the zemindar and others employed by him for the value of crops seized and carried away under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. The Collector gave plaintiff a decree, which was upheld by the Judge. The defendants appealed only on the point of jurisdiction. *Held*, the suit was properly brought in the Collector's Court. *RADHA MOHAN NASKAR v. JADU NATH DAS*, [iii A. C. 261]

15. — *Arrears of rent, suit for—Enhanced rent.* A. took a farming lease from B., by which he agreed to pay B. a certain yearly rent, and stipulated further to pay to B. half of any enhanced rent which he might succeed in realizing from the ryots. *Held*, that a suit by B. to recover arrears of this moiety of enhanced rent would lie in the Revenue Court. *BHABATARINI DAS v. GREY*, [ii A. C. 159]

16. — *Kabuliati—Act X of 1859, s. 23, cl. 1.* A suit to set aside a decree passed by a Deputy Collector for executing a kabuliati in favour of the defendant, and for a declaration that the land in suit pertains to the talook of a third party, is not cognizable by the Civil Court. By cl. 1, s. 23, Act X of 1859, the exclusive cognizance of suits by a zemindar

JURISDICTION OF REVENUE COURT—contd.

against his ryot to obtain a kabuliati is reserved to the Court of the Collector. *SONATAN ROY v. ANAND KUMAR MOOKERJEE* - - - ii Ap. 81

JURY—Appointment and award of—Criminal Procedure Code (Act VIII of 1869), s. 310; Act X of 1872, s. 523. A Magistrate cannot receive and enforce the award of a jury under s. 310 of the Criminal Procedure Code, delivered long after the day fixed for the purpose. A jury appointed under s. 310 is not properly constituted when only the foreman is appointed by the Magistrate and the rest of the members by the parties. *QUEEN v. HARGO-BIND PAL* - - - - - vii Ap. 57

JUS TERTII.

See CONTRACT.
ESCHEAT.

JUSTICE OF THE PEACE.

See JUDICIAL NOTICE.

JUSTICES, SUIT AGAINST.

See BENG. ACT VI OF 1863.

KABULIAT, FAILURE TO PROVE.

See LANDLORD AND TENANT.

KABULIAT, SUIT FOR.

See CO-SHAREERS.
ENHANCEMENT OF RENT.

2. — *Specification of boundaries in kabuliati—Act X of 1859, s. 2.* The want of specification of boundaries in a kabuliati is no ground for dismissing a suit for a kabuliati, when all the particulars of area are given as required, by s. 2 of Act X of 1859. *RAMNATH RAKHIT v. CHAND HARI BHUYA* - - - - vi 356

3. — *Proprietor of fractional share in estate.* The question was referred to a Full Bench "whether a suit by the owner of a fractional share of an undivided estate for a kabuliati will lie." NORMAN, J., was of opinion that, as a general rule, the holder of a tenure cannot be sued by owners of fractional shares in the superior tenure for separate kabuliatis according to the proportions to which they allege themselves to be entitled in the superior tenure. A tenure is an entire thing, and cannot be subdivided against the will of the tenant. *LOCH, BAYLEY, MACPHERSON, and MITTER, JJ.*, did not answer the question, on the ground that it did not arise in the suit. *INDAR CHANDRA DUGAR v. BRINDABUN BHARA*, [viii F. B. 251]

4. — *Decree in suit for kabuliati.* In a decree for a kabuliati the term for which it is to remain in force should not be fixed. *SWARNAMAYI v. GAURI PRASAD DAS* - - - iii A. C. 270

5. — *Tender of patta—Landlord and tenant.* In order to entitle a landlord to sue for a kabuliati, he must tender a patta. *AKHOY SUNKUR CHUCKERBUTTY v. INDRABHUSAN DEB ROY* - - - - - iv F. B. 58

6. — *Evidence—Quantity of land.* In a suit for obtaining a kabuliati, failure to prove the exact quantity of land for which the kabuliati is sought to be obtained renders the suit

KABULIAT, SUIT FOR—continued.

liable to dismissal. *SHIB RAM GHOSE v. PRAN PIRIA* - - - - - iv Ap. 89

7. — *Notice of enhancement—Landlord and tenant.*] *Held per STEER, KEMP, and SETON-KARR, JJ.*, that, under Act X of 1859, a landlord can sue his tenant for a kabuliati fixing the amount of rent, without having served upon him notice of enhancement. *Per NORMAN, J.*—Such notice was necessary, and by s. 9 of Act X of 1859, the landlord must, before suing for a kabuliati, tender a patta to the tenant. *Per PEACOCK, C. J.*—The question did not arise in the case. The relationship of landlord and tenant did not exist between the parties. *RAM KANTH CHOWDHRY v. BHUBUN MOHUN BISWAS* - - - - - Sup. Vol. 25

8. — *Act X of 1859, ss. 9 and 13.*] *Held* by the majority of a Full Bench, a landholder can sue for a kabuliati at an enhanced rate without first having given notice of enhancement under s. 13, Act X of 1859. He can also sue without having first tendered a patta. *Per PEACOCK, C. J.*—He can sue if he has given notice of enhancement. *Per NORMAN, J.*—A suit for a kabuliati is not maintainable except in cases provided for by s. 9, Act X of 1859. *THAKOORANEE DASSEE v. BISHESHUR MOOKERJEE* - - - - - Sup. Vol. 202

9. — *Landlord and tenant—Enhancement—Plaint—Decree.*] A landlord, who sues for a kabuliati at a specified rate, but fails to show that such rate is fair and equitable, is not entitled to a decree for a kabuliati at a less rate, but the suit must be dismissed. *Held also (PHEAR, J. doubting)* that in a suit for a kabuliati the plaintiff should specify the date for the commencement of the kabuliati. A plaintiff which does not specify such date ought to be returned; but if it has been admitted and the case heard, the Court may supply the omission by specifying in the decree the date from which the kabuliati is to commence. *GHOLAM MOHAMED v. ASMUT ALI KHAN CHOWDHRY* - - - - - Sup. Vol. 974
HAMID ALEE v. AFFEEOODEEN, i S. N. xiv

10. — *Right of occupancy—Agreement fixing rent.*] A landlord can sue a ryot not having a right of occupancy for a kabuliati only when an agreement fixing the rent has been entered into. *AHMED REZA v. AGHORI*, [ii S. N. xv

KISTBANDI.

See CIVIL PROCEDURE CODE, s. 206.

KISTBANDI, FILING OF.

See LITIGATION ACT XIV OF 1859, s. 20.

KNOWLEDGE.

See PRESCRIPTION.

KNOWLEDGE OF COMMISSION OF OFFENCE.

See COMPLAINT.

LABORERS.

See ACT XIII OF 1859.

LABORERS, PROTECTOR OF.

See BENG. ACT VI OF 1865.

LABORERS, WAGES OF.

See BENG. ACT VI OF 1865.

LACHES.

See ACQUIESCENCE.

PRIVY COUNCIL, PRACTICE OF.
SUMMONS.

2. — *Act XIV of 1859, s. 1. cl. 15—Estoppel.*] The laches of a mortgagor in taking no steps for many years to enforce his alleged rights, may afford evidence against the existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by s. 1, cl. 15, Act XIV of 1859. On account of the plaintiff's laches the Judicial Committee disallowed mesne profits prior to the date of the institution of the suit, which had been allowed by the High Court. *JUGGURNATH SAHOO v. SHAH MAHOMED HOSSEIN* - - - - - xiv P. C. 386

LAKHIRAJ TENURE.

See RESUMPTION.
SETTLEMENT.

LAND, ACQUISITION OF.

See GHATWALI TENURE.

LAND, ACQUISITION OF, BY GOVERNMENT.

See ACT VI OF 1857.

LAND ACQUISITION ACT (X OF 1870)—High Court—Powers of superintendence.] The Courts established under Act X of 1870 are Courts subject to the appellate jurisdiction of the High Court, and not the less so because an appeal lies to the High Court from their decisions in certain cases only. The High Court consequently has the power of superintendence over those Courts under s. 15 of 24 & 25 Vict., c. 104. There is nothing in Act X of 1870 which gives the Judge and Assessors sitting together power to determine the right to compensation, or the title to the land for which compensation is to be assessed. Where, therefore, the Collector tendered compensation in respect of land, some of which was above, and some below, high-water mark, and made an offer for each separately,—*held*, that the Judge and Assessors had no power to award the whole sum tendered by the Collector as compensation for the land above highwater mark; but they should have determined what was a proper compensation for each description of land. IN THE MATTER OF THE PETITION OF ABDUL ALI, [xv 197

—, ss. 24, 29, 30, 34, & 35—*Appeal—Difference of opinion between Judge and Assessors—“Amount of Compensation.”*] The “amount of compensation” in s. 24, Act X of 1870, must be taken to mean the whole amount of the award, and not the amount of the different items to be taken into consideration separately under that section; therefore, where the Judge differed wholly from one Assessor, and differed from the other Assessor in the

LAND ACQUISITION ACT (X OF 1870), ss. 24, 29, 30, 34, & 35—continued.

amounts awarded for the different items, but agreed with him in the total amount awarded,—*held*, there was not such a difference of opinion between the Judge and both Assessors as to give a right of appeal from the Judge's decision under s. 35. **ANANDA-KRISHNA BOSE v. VERNER** - - - xiii 300

—, ss. 30, 35—*Appeal—Difference of opinion between Judge and Assessors—Compensation.* Under s. 30, Act X of 1870, an appeal lies from the decision of the Judge where he differs from the Assessors, whether the Assessors agree with one another or not. IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870); **HEYSHAM v. BHOLANATH MULLICK**; **BHOLANATH MULLICK v. HEYSHAM** - - - xi 230

—, s. 35—*Appeal—“District Judge” — Officer specially appointed under Act X of 1870—Costs.* An appeal from the decision of a judicial officer appointed to exercise the functions of a Judge under Act X of 1870 within the town of Calcutta, lies to the High Court sitting to hear appeals from decisions by the Court in its original civil jurisdiction. The words “District Judge” in s. 35, Act X of 1870, include the High Court in its appellate jurisdiction, and there is nothing in the definition of those words given in Act I of 1868, s. 2, cl. 12, opposed to this meaning. No appeal lies on a question of costs in a case under Act X of 1870. In this case the costs of the appeal were allowed by the High Court on scale 2. **BAMASOONDEREE DOSSEE v. VERNER** - - - xiii 189

LAND COVERED WITH BUILDINGS, SUIT FOR RENT OF.

See ENHANCEMENT OF RENT.
JURISDICTION OF REVENUE COURT.

LAND FOR BUILDING PURPOSES.

See ENHANCEMENT OF RENT.

LAND SEPARATED BY CHANGE IN COURSE OF RIVER.

See ACCRETION.
CUSTOM.

LAND TAKEN FOR PUBLIC PURPOSES.

See RAILWAY COMPANY.

LAND TAKEN IN EXCESS IN EXECUTION OF DECREE.

See ACT XXIII OF 1861, s. 11.

LAND TEMPORARILY OR PERMANENTLY SETTLED.

See ACCRETION.

LANDLORD AND TENANT.

See ACQUIESCENCE.
BENG. ACT VIII OF 1869, s. 20.
CO-SHAREERS.
ESTOPPEL.
KABULIAT, SUIT FOR.
LIMITATION.
LIMITATION ACT XIV OF 1859,
s. 1, CL. 12.
ONUS PROBANDI.
RES-JUDICATA.

LANDLORD AND TENANT—continued.

2. — *Damage by fire—Negligence—Defect in building.* The plaintiff hired a thatched bungalow of the defendant, entered into possession, and after living in the house some time lit a fire in the fireplace in one of the rooms. The chimney took fire, and the plaintiff's furniture was destroyed. He subsequently ascertained that the chimney had been thatched over, of which fact he had been all along ignorant. *Held*, that the landlord, defendant, was liable in damages for the loss sustained by him. *Per* KEMP, J. — The landlord should have given the plaintiff notice of the defective construction of the chimney. The plaintiff had a right to assume that was properly built. **RADHA KIRSHNA v. O'FLAHERTY**, [iii A. C. 277

3. — *Storage of goods — Warehouse—Damage—Suit for negligence — Onus probandi* The plaintiff let to the defendants a godown on an upper story over his own godown, for the purpose of storing goods, the only stipulation in writing being, that no combustible or hazardous goods should be stored there. The plaintiff alleged that the premises were taken by the defendants on the understanding that the defendants should use the same in a tenant-like manner, yet the defendants used them in an untenant-like manner, and loaded an unreasonable and improper weight on the floor, whereby it broke through and damaged the plaintiff's goods below. The evidence showed that the godown had been used, by former tenants for storing light goods, but, in addition to light goods, the defendants had, at the time the floor broke, stored upon it several casks of white and red lead, and some cases containing tin plates. The evidence of professional witnesses showed that a warehouse-floor ought to be able to bear 1½ cwt. per superficial foot, and there was evidence to show that the pressure on the portion of the floor which fell was, at the time, 1 cwt. 1 qr. 6 lbs. The floor gave way in the part where the heavy goods were stored, but there was nothing to show that they were improperly stored. Evidence was given that it was not usual to store heavy goods on an upper floor, but that heavy goods were sometimes stored on upper floors. The evidence of the professional witnesses was to the effect that the floor was not a proper one upon which to store merchandize, but that 1½ cwt. was not a dangerous weight for a warehouse-floor to bear, and that no unprofessional person could have anticipated danger from it in the present instance. There was also evidence to show that the girders were not sufficient for the floor of an upper story to be used as a godown. In a suit for damage sustained by the plaintiff by reason of the breaking of the floor,—*held* (*per* MACPHERSON, J., and on appeal), that it lay upon the plaintiff to show that the defendants had acted in an improper and untenant-like manner, and that he had failed to show that any improper or unreasonable weight had been placed by the defendants upon the floor, or such as

LANDLORD AND TENANT—continued.

a tenant exercising ordinary caution might not have placed there. **KONGLER v. YULE**,
[v 401

4. — *Claim for rent—8 Anne, c. 14—Distress—Co-landlords.*] Two daughters, as co-partners, were owners of certain property, each having an eight-anna share therein. On June 30th, 1868, they executed a lease of the property, in which it was provided that a monthly rent should be paid in separate payments to each of the two owners respectively, they giving separate receipts for the same. The tenant having failed to pay rent, one of the owners brought a suit for her share in her own name only, and obtained a decree. In execution of this decree she seized and sold property belonging to the tenant. The sale took place on the 12th of February, 1869. On the 15th of February the other owner brought an interpleader suit, the tenant having likewise failed to pay rent to her. She claimed to have what was due to her paid out of the proceeds realized by the sale under the decree. *Held*, that she was not entitled to have it so paid. *Held also per* **PEACOCK, C. J.**—The Statute 8 Anne, c. 14, does not apply to this country. *Held*, that it would not, at any rate, apply to a case in which a claimant seeks to enforce payment of her rent from another creditor for rent, even if it would where the claim was against an ordinary execution-creditor. **PADAMANI DAS v. JAGADAMBA DAS** - - - - - iii O. C. 56

5. — *Lodgings let to prostitute—Suit for rent of.*] A landlord cannot recover the rent of lodgings knowingly let to a prostitute who carries on her vocation there. **GAURINATH MOOKERJEE v. MADHUMANI PESHKAR**,
[ix Ap. 37

6. — *Determination of tenancy.*] In a suit by a lessee to oust the tenant in possession, — *held*, that the tenancy must be shown to have been legally determined by notice to quit, demand of possession, or otherwise. **FITZ PATRICK v. WALLACE** - - - - - ii A. C. 317

7. — *Holding over after expiry of lease—Monthly or yearly tenancy—Notice to quit.*] A. and B. let a house and premises in Calcutta to C. under a Bengali lease, for a period of three years, from 1st Assar, 1273 (14th June, 1866). Upon expiration of the term, C. continued in possession of the house, and A. and B., after repeatedly calling upon him to deliver up possession, served on him, on 18th March, 1873, in a letter written by their attorney, a notice to quit "on or before the 1st day of Jaishta, 1280, B. S., corresponding with the 13th day of May next." *Held*, that C., after the end of his lease, held merely from month to month, and that the tenancy was terminable by a month's notice. *Held* further, that the letter of the 18th March, 1873, was a sufficient notice. There is nothing which makes it a necessary inference that a tenancy in Calcutta is a tenancy by the year, in the absence of any special agreement to

LANDLORD AND TENANT—continued.

the contrary. So far as there is any custom in Calcutta, or any inference of fact to be drawn from mere occupation accompanied by payment of a monthly rent, it is, that the tenancy is a monthly one. **NOCOORDASS MULLICK v. JEWRAJ BABOO** - - - xii 263

8. — *Limitation—Patni lease—Receipt of rent—Notice.*] A., a Hindu, died leaving his widow B. and his mother C. B. adopted D. C. granted a patni patta to E. of certain property belonging to the estate of A. During the minority of D., B. received the rent from E., and afterwards D., on attaining majority, realized rent from E. by suits under Act X of 1859. Twelve years after attaining majority, D. sued for cancellation of the patni lease and for obtaining khas possession of the property. *Held*, that the suit was not barred. The receipt of rent was no confirmation of the patni lease; it only created the relation of landlord and tenant. *Held also*, that the plaintiff was not entitled to khas possession before the relationship of landlord and tenant was legally determined by a reasonable notice. *Semble*.—Such notice should expire at the end of the year. **BUNWARI LAL ROY v. MAHIMA CHANDRA KNUALL** - - - iv Ap. 86

9. — *Acknowledgment of tenancy—Registration of transfer—Deposit of rent.*] The mere deposit of rent in the Collector's office by the purchaser of an under-tenure in his own name and that of the registered tenant, is not sufficient notice to the zemindar of such purchase; nor is the mere acceptance by the zemindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant, but it is otherwise when there is acceptance with notice, notwithstanding that the transfer has not been registered. **MRITYUNJAYA SIRCAR v. GOPAL CHANDRA SIRCAR** - - - - - ii A. C. 131

10. — *Act X of 1859, s. 27—Division of rent or tenure.*] The lessor is not bound to recognize the title of any one except the person with whom he deals, whatever that title may be as between the lessee and the members of his family. **UPENDRA MOHUN TAGORE v. THANDA DAS** - - - - - iii A. C. 349
SADHAN CHANDRA BOSE v. GURU CHARAN BOSE - - - - - viii 6 note

11. — Under s. 27, Act X of 1859, no division of tenure or distribution of rent is valid or binding without the consent in writing of the landlord. **UPENDRA MOHUN TAGORE v. THANDA DAS** - - - - - iii A. C. 349

12. — *Acknowledgment of tenancy—Non-registration and Mutation of names.*] A zemindar is bound to sue the actual tenant, when known to him, though the tenant's name has not been registered in his sherista. There can be a legal and valid recognition by a landlord of the vendee of a saleable under-tenure as tenant, notwithstanding that no mutation of names has taken place in his books. **MEAH JAN MUNSHI v. KURBUNAMAYI DEBI** - - - - - viii 1

LANDLORD AND TENANT—continued.

13. — *Transfer by registered tenant—Sale in execution of decree—Receipt of rent—Acknowledgment of tenancy—Beng. Act VIII of 1865, s. 16.* The plaintiffs were shareholders with one B. in a tenure, of which B. was the registered tenant, but of which he had assigned part to the plaintiffs without the consent of the zemindar. In execution of a decree against B. for arrears of rent, the plaintiffs' portion was sold, and purchased by the defendant. In a suit by the plaintiffs to set aside the sale, and recover their property, *held*, they were pecuniarily liable for the rent with B., unless the zemindar had made a separate agreement with them; that the whole tenure was rightly seized and sold in execution of the decree; and that the taking of the rent from them by the zemindar was no such recognition as to bind him, or create a valid incumbrance under s. 16, Beng. Act VIII of 1865. *SRINATH CHUCKERBUTTY v. SRIMANTO LASHKAR*, [viii 240 note

14. — *Suit for kabuliati.* The defendant was under-tenant in respect of lands which his lessor held under a modafut from the zemindar. Subsequently the lessor left, and the zemindar gave to the defendant a patta for part of the lands covered by the modafut, and to the plaintiff a patta for the whole land covered by the original modafut; but did not assign any of his rights as zemindar to the plaintiff to recover or enhance the rent reserved in the patta he had granted to the defendant. *Held*, in a suit for a kabuliati at an enhanced rate, that the plaintiff and defendant were not in the position of landlord and tenant, so as to enable the plaintiff to maintain his suit. *KALAM SHEIKH v. PANCHU MANDAL*, [ii A. C. 252

15. — *Resumption of invalid lakhiraj—Reg. II of 1819—Suit for kabuliati—Act X of 1859, s. 23, cl. 1.* The having obtained a decree for resumption of invalid lakhiraj lands, held on tenure prior to 1st December, 1790, under Reg. II of 1819, does not create the relationship of landlord and tenant between the plaintiff and defendant so as to enable the plaintiff to sue for a kabuliati under cl. 1, s. 23, Act X of 1859. That relationship came of course into existence until the lakhirajdar has agreed to pay the revenue assessed by the Collector. *MAHAB CHANDRA BHADORY v. MAHIMA CHANDRA MAZUMDAR* - - - viii Ap. 83 note

16. — *Resumption of invalid lakhiraj—Reg. II of 1819, s. 30.—Reg. XIX of 1793, s. 10—Decree of Civil Court.* A decree of a Civil Court in a suit (the plaintiff of which referred to s. 30 of Reg. II of 1819, and s. 10 of Reg. XIX of 1793) which declared the right of the zemindar to assess rent on land not proved to have been held under a grant prior to 1st December, 1790, is sufficient to establish the relationship of landlord and tenant between the zemindar and the party against whom the right of assessment was

LANDLORD AND TENANT—continued.

declared. *SAUDAMINI DEBI v. SARUP CHANDRA ROY* - - - - - viii Ap. 83

SHAMASUNDARI DEBI v. SITAL KHAN, [viii Ap. 85 note

MADHUSUDAN SAGORY v. NIPAL KHAN, [viii Ap. 87 note

ROHINI NANDAN GOSSAIN v. RATNESWAR KUNDU - - - - - viii Ap. 89 note

17. — *Variance between pleading and proof—Suit for rent—Failure to prove kabuliati.* Where a landlord sued a ryot for arrears of rent alleged to be due under a kabuliati, and the Court found that such kabuliati had not been executed by the ryot, although he had occupied the land, the landlord was held not entitled to have a further trial of the question whether any, and what amount of rent was due on account of the ryot's occupation of the land. *LUKHEE KANTO DASS CHOWDERY v. SUMEERUDDI LUSKEER* - - - xiii F. B. 243

18. — *Suit for rent—Regs. V of 1799, s. 5, and V of 1827, s. 3—Sub-tenure taken charge of by Collector.* Under the provisions of Reg. V of 1799, s. 5, and Reg. V of 1827, s. 3, the Collector took charge of a sub-tenure as administrator of a deceased person to whom the sub-tenure belonged. *Held*, the Collector was in no sense the tenant of the superior landlord, and consequently no suit would lie against him under Act X of 1859 for rent alleged to be due in respect of the sub-tenure. *COLLECTOR OF BOGRAH v. DWARKANATH BISWAS* - - - - - iv Ap. 80

19. — *Suit for arrears of rent—Intervenor under Civil Procedure Code, s. 73—Issue.* D. C. S., the zemindar, brought a suit against B., a ryot, for recovery of arrears of rent valued below Rs. 100. B. set up in defence that the rent was not payable to D. C. S. but to N. C. A., the mukuridar. N. C. A., who claimed under a mukurari title, and alleged that he was in receipt of the rents from the ryots, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff, which, on appeal by N. C. A., was reversed and the suit dismissed. *Held*, on appeal to the High Court, the only issue to be tried was whether the relation of landlord and tenant subsisted between D. C. S. and B. *DAYAL CHAND SAHOY v. NABIN CHANDRA ADHIKARI* - - - - - viii 180

20. — *Act X of 1859, s. 23, cl. 6, and s. 25—Act XIV of 1859, s. 15—Ejectment—Suit for possession by ryot.* When a zemindar, of his own authority, and without the intervention of the Collector under s. 25, Act X of 1859, ejects a tenant whose lease has expired, the tenant may recover possession, without reference to the title of the zemindar to eject him, in a suit under s. 15, Act XIV of 1859; but if the tenant sue under cl. 6, s. 23, Act X of 1859, the question is open as to whether the tenancy was at an end or not; and if it was at an end, the tenant must fail in his suit. *JONARDUN ACHARJEE v. HARADUN ACHARJEE*, [Sup. Vol. 1020

LANDLORD AND TENANT—continued.

21. — *Tenant-at-will—Accretion.* A tenant-at-will is entitled to occupy an accretion to his holding so long as he retains possession of his original holding. *BRUGABUT PRASAD SINGH v. DURG BIJAI SINGH* - - - viii 78

22. — *Suit for rent—Encroachment—Excess lands.* A., the holder of an independent istemrari tenure lying in B.'s seminary, let it to C., who, under cover of his lease, encroached upon the seminary lands. *Held*, that there was no implied contract of tenancy between C. and B., and B. could not sue C. for rents on account of the excess lands. *JAY-NARAYAN SINGH v. MATILAL JHA* - i A. G. 21

23. — *Sub-tenant—Breach of stipulation in lease—Excavation of tank.* The plaintiff let a piece of land to M., and by the terms of the lease it was stipulated that the lessee should not excavate a tank on the land. M. sublet the land to J. and N., who, in the course of their occupation, excavated a considerable plot of ground. The plaintiff, thereupon, brought a suit against M. J., and N. to have the ground restored to its former condition, or for damages. The first Court gave a decree for the plaintiff. The Judge was of opinion that J. and N. not being parties to the original lease could not be made liable in the suit, and he dismissed the suit as against them. The plaintiff appealed making J. and N. only respondents. *Held*, that J. and N. had no right to use the land in contravention of the terms of the lease, and that if the plaintiff proved that their acts were in breach of the stipulation in the lease to M., he was entitled to the assistance of the Court in getting the land restored as nearly as possible to its former condition. *MONINDRO CHUNDER SIRCAR v. MONERUDDEEN BISWAS* xi Ap. 40

24. — *Bhooli rent—Valuation of crop.* A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money-equivalent. *Held*, that the prices at which the landlord was entitled to have the crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him. *LACHMAN PRASAD v. HOLAS MAHTOON* - ii Ap. 27

25. — *Appointment of sezawal on default in payment of rent—Determination of tenancy.* It was stipulated in defendant's lease that, on his failing to pay any instalment of the rent, plaintiff might appoint a sezawal to collect direct from the under-tenants. *Held*, that the appointment of such a sezawal did not determine defendant's lease, and that he was still liable for any deficiency in the rent after the sezawal's collections were credited. *FAKIRUDDIN MAHOMED ASHAN v. PHILLIPS* - - - - - iii Ap. 53

Contra DALEYMPLE v. BRAJAN SAHA,

[iii Ap. 54 note

26. — *Patni talook—Sale for arrears of rent—Optimus interpretes rerum usus.* The plaintiff, purchaser of a talook sold for arrears of rent under Reg. VIII of 1819, brought a

LANDLORD AND TENANT—continued.

suit for khas possession of a tank within the talook purchased by him, which had been held by the defendant and her predecessors from a time anterior to the grant of the talook. *Held*, that the relationship of landlord and tenant in which the parties stood did not prevent the application of the maxim *optimus interpretes rerum usus*, and it was open to the defendant to show by evidence as to the nature of the enjoyment what the origin of the tenure really was. It being shown that the interest in the tank had been frequently transferred during a period of more than sixty years without any change in the terms of the holding or the amount of rent paid, and that one of the transferees of the tank had been the owner of the talook in which it was, it was *held*, that the plaintiff was not entitled to a decree for khas possession. *NIDHIKRISHNA BOSE v. NISTARINI DAS* - - - xiii 416

27. — *Sale by tenant without consent of landlord—Position of purchaser—Erection of brick-built house by tenant—Right of owner of land to houses built thereon.* The relation between landlord and tenant is that of parties to a contract. The contract is entire and single. If a portion of a tenure be sold either by the tenant or in execution of a decree of the Civil Court against the tenant, in the absence of any consent by the semindar, the only mode in which effect can be given to the alienation is to treat the purchaser as holding a rent-free tenure subordinate to that of the original tenant. In this country the ownership and right of possession in the soil does not necessarily carry with it a right to the possession of buildings erected thereon. A tenant who held a piece of land on a lease, erected a brick house upon the land without the permission of, but without any objection by, his landlord. In execution of a decree of the Civil Court against the tenant in January, 1865, the materials of the house and the site on which the house was built were sold separately to two individuals from whom the defendant purchased both. On the 31st July, 1866, the tenure itself was sold for arrears of rent to one N., from whom the plaintiff purchased it. The plaintiff brought this suit to recover possession of the land free from all incumbrance by the removal of the house. The Court refused to give the plaintiff a decree for possession. *SHIBDAS BANDOPADHYA v. BAMANDAS MUKHAPADHYA,* [viii 237

28. — *Buildings on land—Ownership in land and buildings.* According to the usages and customs of this country, buildings and other such improvements made on land do not, by the mere accident of their being attached to the soil, become the property of the owner of the soil. The general rule is that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bonâ fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before

LANDLORD AND TENANT—continued.

the improvement was made, or to obtain compensation for the value of the building, if it is allowed to remain for the benefit of the owners of the soil; the option of taking the building, or allowing the removal of the materials, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate which he may possess. **IN THE MATTER OF THE PETITION OF THAKOOR CHUNDER PARAMANICK** - - Sup. Vol. 595

29. — *Huts, right of tenant to—Acquiescence.*] On a case stating that the plaintiff became tenant to the defendant of certain land in Calcutta, and at the time of becoming such tenant purchased from the out-going tenant, with the defendant's knowledge, two tiled huts which were then standing on the land; that "it had been the practice in Calcutta for tenants to remove such tiled huts as those of the plaintiff erected upon the land let to such tenants, and such huts were by such practice treated as the property of the tenants, who, by such practice, were in the habit of disposing of them without the consent of their landlords;" that relying on the abovementioned practice, the plaintiff, with the defendant's knowledge, had partially pulled down and rebuilt such huts; that the plaintiff's tenancy was determined, and the plaintiff ejected from the land by the defendant; that before leaving she endeavoured to pull down and remove the huts, but that she was prevented from so doing by the defendant, who claimed the huts as her property:—*Held*, that the plaintiff, by the practice stated, was entitled, before giving up possession of the land, to pull down and remove the tiled huts. *Held* further, that apart from the existence of a valid custom entitling the tenant to remove tiled huts, the plaintiff having bought the huts from the out-going tenant with the defendant's knowledge, and relying on the practice, and with the defendant's knowledge having partially pulled down and rebuilt the huts, was entitled as against the defendant to remove them. **PARBUTTY BEWAH v. WOOMATARA DABEE** - - - - - xiv 201

30. — *Building, right of tenant to remove—Additions to existing building.*] A tenant making additions to an existing building is not entitled to remove the building, but is only entitled to compensation for the present value of the expenses incurred by him in making such additions. Possibly, in some cases, he may remove the additions if he can do so without in any way injuring the original building. **GOPAL MULICK v. ANUNDO CHUNDER CHATTERJEE** - - - - - xiv 205 note

LANDMARKS, OBLITERATION OF.

See ACCRETION.

LEASE, AGREEMENT FOR.

See REGISTRATION ACT XX OF 1866, s. 17.

LEASE, BREACH OF CONDITION FOR FORFEITURE IN.

See ACT X OF 1859, s. 78.

LEASE, SUIT FOR CANCELMENT OF.

See ACT X OF 1859, s. 78.

LEASEHOLD PROPERTY.

See CIVIL PROCEDURE CODE, s. 34.

LEAVE TO APPEAL GRANTED WITHOUT AUTHORITY.

See PRIVY COUNCIL, PRACTICE OF.

LEAVE TO APPEAR AND DEFEND.

See BILLS OF EXCHANGE ACT.

LEAVE TO DEFEND SUIT WITHOUT FEES.

See INSOLVENCY.

LEGACY, SUIT FOR.

See PARTIES.
WILL.

LEGAL NECESSITY.

See HINDU LAW, ALIENATION.

LEGISLATURE, POWER OF.

See JURISDICTION OF CRIMINAL COURTS.
REG. III OF 1818.

LESSEE OF GOVERNMENT.

See LIMITATION ACT XIV OF 1859, s. 17.

LESSEE, RIGHT OF.

See ABATEMENT OF RENT.

LESSOR AND LESSEE.

See LANDLORD AND TENANT.

LETTER OF ADVICE.

See EVIDENCE ACT, s. 32.

LETTERS BETWEEN MEMBERS OF JOINT FAMILY AND KURTA OF THE FAMILY.

See EVIDENCE.

LETTERS OF ADMINISTRATION.

See CERTIFICATE OF ADMINISTRATION.
ILLEGITIMACY.

2. — *Jurisdiction of High Court—Attorney of executor—Administrator-General.*] The High Court has no power to grant letters of administration to the attorney of the executor of a deceased in respect of assets situate in the Punjab. The High Court has power to grant letters of administration in respect of such assets to the Administrator-General. **IN THE GOODS OF DUNCAN** - - - i O. C. 8

3. — *Jurisdiction.*] A British subject died intestate, leaving property within the jurisdiction of the High Court of the N. W. Provinces and of the High Court at Fort William. General letters of administration were granted by the High Court of the N. W. Provinces to the Administrator-General of Bengal, who was not then aware that the deceased had left property within the jurisdiction of the High Court at Fort William. On discovering that the deceased had left property within the jurisdiction of the latter Court, the Administrator-General applied to that Court for general letters of administration, which were granted by the Court, on

LETTERS OF ADMINISTRATION—continued.

condition that he would apply to have the letters of administration granted by the High Court of the N. W. Provinces recalled. The High Court at Fort William has power to grant to the Administrator-General letters of administration which shall operate throughout the whole of the Presidency of Bengal. *IN THE GOODS OF NECHTERLEIN* - - - i O. C. 19

4. — *Succession Act (X of 1865), ss. 212, 213—Attorney within Jurisdiction of Court.*] Under ss. 212 and 213, Act X of 1865, it is necessary that the attorney applying for letters of administration should be within the jurisdiction of the Court. *IN THE GOODS OF NESBITT; IN THE GOODS OF BRIANT* - iv Ap. 49

5. — *Applicant indebted to estate—Joint letters.*] Where there were grounds for believing that one brother was indebted to the estate of a deceased brother, the lower Court, it was held, exercised a wise discretion in refusing to grant letters of administration to such brother jointly with the other brothers of the deceased. *IN THE GOODS OF STEPHEN* - - - i S. N. iii

6. — *Attorney of executor in England—Costs of entering caveat.*] *L.*, a British subject possessed of property both in India and England, died in England, leaving a will, by which he appointed four persons to be his executors in England, and *W. D.* his executor in India, "the latter accounting to the former for his intromissions, upon which he will charge a commission of three per cent." Probate was granted to the four English executors, but *W. D.* renounced probate. On an application for letters of administration with the will annexed, to be granted to *D. G. L.*, the attorney in India of the English executors, the Court, after directing a special citation to issue to the Administrator-General, *held*, that the English executors were intended by the testator to have power of administering his assets in India as well as in England, and therefore *D. G. L.*, as their attorney, was entitled to letters of administration. *IN THE GOODS OF LECKIE* - - - - - xv Ap. 8

LETTERS OF ADMINISTRATION, DUTY PAYABLE ON.

See COURT FEES ACT.

LETTERS PATENT, cl. 10—Giving instructions to counsel—Reference from Small Cause Court—Attorney.] Giving instructions to counsel in a reference from the Small Cause Court, is acting for the suitor within cl. 10 of the Letters Patent of the High Court, and can only be done by an Attorney of the Court. *MORAN v. DEWAN ALI SIRANG* - - - viii 418

—, cl. 12.

See APPEAL.

CAUSE OF ACTION.

2. — *Suit for land—Jurisdiction.*] Some of the property being situated in, and some out of, the jurisdiction of the Court, *held*, that the Court had jurisdiction to try the suit according to the true construction of s. 12 of the Charter, 1865, in reference to the whole of

LETTERS PATENT, cl. 12—continued.

the property. *PRASANAMAYI DAS v. KADAMBINI DAS* - - - - - iii O. C. 85

3. — Under cl. 12 of the Letters Patent, the High Court has jurisdiction to entertain suits for land, whether the land is situated wholly or in part only within the local limits of its ordinary original jurisdiction, leave of the Courts having been first obtained in the latter case. *JAGADAMBA DAS v. PADMAMANI DAS* - - - - - vi 686

4. — *Partition.*] A suit for partition of land is a suit for land within the meaning of cl. 12 of the Letters Patent. *PADAMANI DAS v. JAGADAMBA DAS* - - - - - vi 134

5. — *Civil Procedure Code, s. 5—Suit in personam—Suit for injunction to restrain nuisance.*] The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby. The defendants were a railway company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorized and directed to make and maintain such railway stations, offices, machinery, and other works (connected with making, maintaining, and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867, under the sanction of the Bengal Government, on land purchased by the Government in 1854 for the purposes of the railway under Reg. I of 1824 and Act XLII of 1850, and which had been made over to the defendants. *Held*, that the suit was *in personam*, and not a suit "for land or other immoveable property" within the meaning of cl. 12 of the Letters Patent, 1865, or of s. 5 of Act VIII of 1859. *RAJMOHUN BOSE v. EAST INDIAN RAILWAY COMPANY* - - - - - x 241

6. — *Trust estate—Receiver—Account.*] The plaint in a suit brought by some of the persons appointed trustees under a deed of endowment of certain land against their co-trustees who were in possession, alleged that the defendant-trustees had ousted the plaintiffs and had committed breaches of trust, and prayed that the deed might be construed and given effect to, and for a declaration that the plaintiffs were entitled to be sebaits jointly with the defendants, for the settlement of a scheme for the performance of the worship, for the appointment of a receiver, for an injunction to restrain the defendants from interfering with the property, and for an account. By the deed the land was given to idols named therein, and the plaintiffs and defendants were appointed sebaits and managers of the property, and were directed to accumulate for the benefit of the idols any

LETTERS PATENT, cl. 12—continued.

surplus over and above the expenses of management, but were themselves to have no beneficial interest in the property. The land, the subject of the deed, was situated out of Calcutta, but all the parties to the suit resided within the local limits of the High Court's jurisdiction. *Held*, that the suit was not a suit for "land or other immoveable property" within cl. 12 of the Letters Patent, and therefore the Court had jurisdiction to entertain it without leave to sue being obtained. The Court might, if necessary, appoint a receiver of such property and direct an account. **JUGGODUMBA DOSSEE v. PUDDOMONEY DOSSEE** - xv 318

7. — *Suit for foreclosure — Portion of property in mofussil.*] Where a plaintiff prayed for foreclosure of a mortgage in the English form of certain land situated partly in Calcutta and partly in the mofussil, and for an account, *held*, that leave to sue having been obtained under cl. 12 of the Letters Patent, the Court had power to make a decree with respect to the whole of the property. **BANK OF HINDUSTAN, CHINA, AND JAPAN v. NUNDOLALL SEN** - - - - - xi 301

—, cl. 12—*Transfer of case from mofussil — Law governing case.*] Where a suit was originally instituted in the Hooghly Court, and H. S., who was a defendant, and not subject to the jurisdiction of that Court, joined in an application to have the case tried by the High Court in the exercise of its extraordinary original civil jurisdiction, which application was granted.—*Held per* PHEAR, J., that the suit must be treated as if the plaintiff had been originally filed in the High Court, the proceedings in the Hooghly Court being without jurisdiction, and the cause of action having arisen wholly within the jurisdiction of the High Court. *Held on appeal* by PEACOCK, C. J., and MACPHERSON, J., that the defendant H. S., by joining in the application to have the suit removed to the High Court, admitted the jurisdiction of that Court to try the suit in the exercise of its extraordinary original civil jurisdiction, and could not afterwards dispute the jurisdiction. The law, therefore, to be administered by the High Court must be the same law and equity which ought to have been applied if the suit had been tried in the Court at Hooghly. *Per* MACPHERSON, J.—The law which would have been applicable to the case, if it had been tried at Hooghly, is practically the same as the English law, whatever may be the nationality of the parties. **GROSE v. AMIR-TAMAYI DASI** - - - - - iv O. C. 1

2. — *Grounds for transfer.*] The Court refused to transfer a case from the mofussil, where there were, among other alleged reasons, suggestions that the plaintiff's case might be prejudiced by being tried in the mofussil, and that difficult and intricate questions of law would arise in the case, the Court not being satisfied by the evidence that such reasons existed. **COURJON v. COURJON** - ix Ap. 10

LETTERS PATENT, cl. 18—continued.

3. — On an application under the Letters Patent, 1865, cl. 13, for the removal of a suit, *held* that, having regard to the whole circumstances connected with the case from the beginning, the questions to be disposed of, and the conduct of the Judge before whom the proceedings were, it was proper and necessary for the purposes of justice that the suit should be removed. **THAKOOR KAPILNATH SAHAI DEO v. THE GOVERNMENT** - - x 168

4. — *Sale in execution of decree—Order winding up company*] On 25th October, 1870, a petition for the winding up of the B. T. E. Company of Assam was presented to the Court of Chancery in England by one of the shareholders of the Company, and a provisional liquidator was appointed. On 5th November, at an extraordinary meeting of the Company, it was resolved that the Company should be wound up, and liquidators were appointed. On 12th November, the petition for winding up came on for hearing, and an order was made that the voluntary winding up should continue subject to the supervision of the Court. On 18th November, by deed under the hands and seals of the liquidators, M. was appointed their attorney in India. On 27th October, certain immoveable properties in Assam belonging to the Company were attached in execution of decrees in certain suits in the Court of the Munsif of Debroghur. On 9th December the properties were put up for sale, and purchased at prices which it was alleged were considerably under their value. Applications were made in the Munsif's Court at Debroghur by the purchasers for confirmation of the sales, which applications were opposed by M., and pending the Munsif's decision, an application was made to the Deputy Commissioner of Luckimpore for an order to stay all proceedings in the decreesuits on the ground of the order for winding up the Company of 12th November, which application was refused on 15th February, 1871. On 16th February, 1871, the Munsif made an order confirming the sales. M. thereupon petitioned the High Court for the removal of the suits from Assam to the High Court to be tried in its extraordinary original civil jurisdiction, on the ground that no appeal would lie against the order of 15th February, refusing to stay the proceedings in the suits; and that if an appeal should be preferred to the Deputy Commissioner from the order of the Munsif confirming the sales, his decision would be final. The application was opposed on behalf of the purchasers. *Held*, the Munsif not having had notice of the winding up order of 12th November, had power to sell the property on 9th December, and the sale having actually taken place, and there being nothing to show that there was any irregularity in the proceedings, the High Court would have no power, if the cases were brought down, to set aside the sale. This, therefore, was not a proper case for the exercise of the power which the High Court possesses under cl. 13 of the Letters

LETTERS PATENT, cl. 13—continued.

Patent. IN THE MATTER OF DECREE-SUITS
IN THE COURT OF MUNSIF OF DEBBOGHUR,
[vii 305]

—, cl. 15.

See APPEAL TO PRIVY COUNCIL.

2. — *Judgment — Appeal — Appealable order — Order rejecting review.* An order passed by the senior of two Judges of a Division Bench who differed in opinion, dismissing an application for the review of their judgment, is not appealable. Such an order is not a judgment within the meaning of cl. 15 of the Letters Patent. **RAKU BIBI v. KHAJA MAHOMED MUSA KHAN** — iv A. C. 10

3. — *Arguments on appeal—Practice.* On appeal under cl. 15 of the Letters Patent, no other points may be argued than those which were argued before the Division Bench. **HAJRA BEGUM v. KHAJA HOSSEIN ALI KHAN**,
[iv A. C. 86]

HIRANATH KOME v. RAM NARAYAN SINGH.
[ix 274]

4. — *Filing petition of appeal—Practice* *Per* PEACOCK, C. J., and KEMP and MACPHERSON, JJ.—A petition of appeal under cl. 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented within thirty days from the time when the written judgments of the Division Bench are put in. The difference of practice on the Original and Appellate Jurisdictions of the High Court contrasted. **HARRAK SING v. TULSI RAM SAHU** — — — — — v 47

5. — *Appeal — “ Judgment ” — Appealable order—Order granting Mandamus.* *Held* (*per* COUCH, C. J., and MARKBY, J., on appeal), the word ‘judgment’ in cl. 15 of the Letters Patent of 1865 means a ‘decision,’ whether final or preliminary, or interlocutory, which affects the merits of the question between the parties by determining some right or liability. The order of the Court below, that a writ of mandamus should issue, was not a ‘judgment,’ therefore no appeal lay from it. **JUSTICES OF THE PEACE FOR CALCUTTA v. ORIENTAL GAS COMPANY.**
[viii 433]

6. — *Appeal from decision of Division Bench in exercise of civil appellate jurisdiction* *Held* (JACKSON, J., doubting), an appeal lies under cl. 15 of the Letters Patent, 1865, from the judgment (not being a sentence or order passed or made in any criminal trial) of a Division Court in the exercise of appellate jurisdiction, when the Judges of such Court are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges. **SURNOMOYEE v. LUCHMEEPUT DOOGUR** — — — — — Sup. Vol. 694

7. — *Civil Procedure Code, s. 257 — Act XXIII of 1861, s. 23—Arguments on appeal—Practice.* Cls. 15 and 36 of the Letters Patent of the High Court must be treated as qualifying s. 257 of Act VIII of 1859. Under the Letters Patent of 1865, in lieu of the former practice under Act XXIII of 1861, s. 23,—namely, that

LETTERS PATENT, cl. 15—continued.

when the Appeal Court consisted of only two Judges, and there was a difference of opinion between them upon a point of law, the case was re-argued upon that question before one or more of the other Judges,—when the Judges of a Division Court are equally divided in opinion as to the decision to be given on any point, the opinion of the senior Judge is to prevail, subject, however, to a right of appeal from such judgment of the Division Court. The judgment passed on such appeal, and not the judgment of the Division Court, will be ‘final.’ In appeal under cl. 15 of the Letters Patent, 1865, no point can be argued, except a point on which the two Judges of the Division Bench have differed in opinion. **ROY NANDIPAT MAHATA v. URQUHART** — — iv A. C. 181

—, cl. 18.

See INSOLVENT ACT, s. 5.

—, cl. 19.

See CONTRACT ACT, s. 27.

—, cl. 29—*Transfer of criminal case.* The construction of cl. 29 of the Letters Patent, 1865, is, that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the mofussil. “Competent to investigate it” does not include competency as regards local jurisdiction; but only competency with regard to the offender, the nature of the offence and the punishment. **QUEEN v. NABADWIP GOSWAMI** — 10. Cr. 15

2. — *Power of single Judge on Original Side of High Court.* On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds mainly that all but one of the charges against the prisoners were for offences committed in Calcutta; that the selection of Patna as the place of trial was calculated to prejudice the prisoners; that the police at Patna were getting up the case against the prisoners by improper and illegal means; that by these means was created such a feeling of dread and insecurity among the witnesses and others in Patna as would prevent a fair trial from taking place there; that some of the witnesses for the defence, although willing to give evidence in Calcutta, refused to go to Patna to give evidence; and that many difficult points of law were likely to arise at the trial; but these allegations were denied by the affidavits filed in opposition to the application.—*Held* (MACPHERSON, J., doubting), the High Court had power under cl. 29 of the Letters Patent to transfer the case for trial by itself. The Court, however, refused the application on the ground that a sufficient case had not been made out for the exercise of the power of the Court. *Per* PHEAR, J.—A single Judge, sitting on the original side of the Court, has power to entertain an application for the removal of a criminal case from a Court in the mofussil to

LETTERS PATENT, cl. 29—continued.

the High Court in the exercise of its extraordinary original criminal jurisdiction. **QUEEN v. AMEER KHAN** - - - - - vii 240

—, cl. 36.

See APPEAL IN CRIMINAL CASES.

—, cl. 39

See APPEAL TO PRIVY COUNCIL.

—, cl. 42.

See APPEAL TO PRIVY COUNCIL.

LETTERS PATENT, N. W. P., s. 27.

See REFERENCE FROM SUDDER COURT AT AGRA.

LIABILITY FOR NUISANCE CAUSED BY WORKS.

See RAILWAY COMPANY.

LIBEL — *Rejection of plaint — Ironical publication.*] On the presentation of a plaint for libel, the Court must see whether the alleged libellous matter set out in the plaint is really libellous: if it is not, there is no ground of action, and the plaint ought not to be admitted. If the words which are set out in the plaint are not a libel, the plaintiff cannot, by alleging that they were printed and published by the defendant with the intent to injure the plaintiff, and bring him into public scandal and disgrace, and to expose him to public scorn and ridicule, and to cause it to be suspected that the plaintiff was a dishonest person, and had been actuated by sinister and fraudulent motives, make them a libel; nor can the plaintiff, by alleging that words are spoken ironically, make them libellous, if they do not appear to the Court to be so. **WYMAN v. BANKS** - - - - - x 71

2. — *Publication.*] A. brought an action against B. for damages for defamation of character. The alleged libel was contained in a letter written and sent as an ordinary private letter by post by B. to A. No publication was alleged or proved, and the only damage alleged was injury to A.'s feelings. *Held*, that the suit was rightly dismissed. **KAMAL CHANDRA BOSE v. NABIN CHANDRA GHOSE**, [i S. N. xii

LICENCE TO PRACTISE AS A PLEADER, WITHDRAWAL OF.

See RECORDERS' ACT, s. 17.

LICENCE TO SELL LIQUOR.

See MANDAMUS.

LIEN.

See DEPOSIT OF TITLE-DEEDS. MORTGAGE. VENDOR AND PURCHASER.

LIEN FOR DISBURSEMENTS.

See BOTTOMRY-BOND HOLDER.

LIEN FOR WAGES, MASTER'S

See BOTTOMRY-BOND HOLDER.

LIEN, SUIT FOR DECLARATION OF.

See CIVIL PROCEDURE CODE, s. 246.

LIGHT AND AIR, RIGHT TO.

See PRESCRIPTION.

LIMITATION.

See APPEAL.

BOND.

CIVIL PROCEDURE CODE, ss. 206, 246.

CO-SHARERS.

EXECUTION OF DECREE.

REG. II OF 1805.

RESUMPTION.

TRUSTEE AND CESTUI QUE TRUST.

WASTE.

2. — *Statutes of, Construction of.*] Statutes of Limitation are, in their nature, strict and inflexible enactments, and ought to receive such a construction as the language in its plain meaning imports. **LUCHMEY BUKSH ROY v. RUNJEET RAM PANDAY** xiii P. C. 177

3. — *Question of—Appellate Court.*] An Appellate Court can, *ipso motu*, raise the question of limitation for the first time where it appears on the face of the plaint that the suit is barred. **MOZAFFUR ALLY v. GIRISH CHANDRA DAS** - - - - - i A. C. 35

4. — *Pleading—Small Cause Court Rule 19.*] *Per* PEACOCK, C. J., and NORMAN, J.—It is competent for a Judge of the Court of Small Causes, of his own motion, to notice the point of limitation, and to decide a case upon that issue, such issue not having been raised by the defendant. *Per* MARKBY, J.—It is not competent for such Judge to raise the point, and decide the case thereon, after the case of both parties is closed. Lapse of time does not oust the jurisdiction of the Court. **PAYNE v. CONSTABLE** - - - - - i O. C. 49

5. — *Plea of—Landlord and tenant.*] The plea of limitation can be raised and determined in a suit brought by a landlord against a person who is really a trespasser, but who has set up a false case of tenancy. **DINOMONEY DABEA v. DOORGAPESAD MOZOOMDAR**, [xii F. B. 374

6. — Limitation can be pleaded in a suit by a landlord against a tenant, but where the defendant claimed to hold on a mokurari tenure, to make the possession adverse, it must be shown that the plaintiff knew of the title set up by the defendant. **TEKAITNE GOWRA KUMARI v. THE BENGAL COAL COMPANY** - - - - - xii 283 note

7. — Where the plaintiff sued for khas possession of land, it was *held* the defendants, tenants of the plaintiff, could raise the plea of limitation, on the ground that they had held possession of the land as bi-howladars for more than twelve years previous to the suit. **RUTONMONEE DABEE v. KOMOLAKANTH MOOKERJEE** - - - - - xii 283 note

8. — *Semble.*—A sublessee without title cannot plead limitation against his landlord either by himself or through his lessor. **MAHARAM SHEIKH v. NAKOWRI DAS MAHALDAR**, [vii Ap. 17

9. — *Computation of time—English Calendar.*] In calculating time for the purpose of applying the law of limitation, the computation

LIMITATION—continued.

must be made according to the English calendar. In a suit brought on the 5th Assar, 1273 (3rd July, 1866), for recovery of a sum of money for goods sold and delivered, the debt for which the defendant acknowledged by a writing dated 8th Assar, 1270 (9th June, 1863),—*held*, that the suit was barred by lapse of time. **JAY MANGAL SING v. LAL RUNG PAL SING**,

[iv Ap. 53]

10. — *Beng. Act VIII of 1869, s. 27—Act I of 1868.* In a suit under Beng. Act VIII of 1869, to recover possession of land on the allegation that the plaintiffs had acquired a right of occupancy, and had been dispossessed, the Court, following the interpretation of 'year' given in Act I of 1868, *held*, that the computation of the limitation must be according to the English calendar. **KHASBO MANDAR v. PREMLAL** - - - - - ix Ap. 41

11. — *Time expiring on Sunday or holiday.* Under Act XIV of 1859 a suit not brought within the period allowed for that purpose, will be barred although such period may expire on a Sunday, holiday, or *dies non*. **RAJKRISTO ROY v. DINOBUNDO SURMA**,

[Sup. Vol. 360]

12. — *Execution of decree—Attachment of decree.* *Held* that, in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment creditor should be deducted. **CHANDI PRASAD NANDI v. RAGHUNATH DHAR** - - - - - iii Ap. 52

13. — *Execution of decree—Holiday—Sunday.* A decree was passed on the 6th September, 1865. Application for execution was made on 7th September, 1868; the 6th September, 1868, was Sunday. *Held*, that the fact of the last day of the three years within which application for execution might be made falling upon a Sunday, gave the Court no power to entertain such application on the day following. *Held* also, that the day on which the application for execution is made is not to be excluded from the computation, and that the application must be made within three calendar years from the passing of the decree. **KHODIE LAL v. BISWAS KUNWAR**,

[iv A. C. 131]

But see **BRAJABEHARI v. KAMAL ROY**,

[i S. N. i]

14. — *Holiday—Cause of action—Promissory note payable on demand.* The plaintiff sued on a promissory note payable on demand, dated November 14th, 1867. He filed his plaint on November 14th, 1870, that being the first day on which the Court was open after the Durga Puja holidays. The 13th November was Sunday. *Held*, the day on which the note was made was to be excluded in computing the period of limitation, and that, therefore, the suit was not barred. **ABDUL ALI v. TARACHAND GHOSE** - - - - - vi 292

S. C. on appeal, **TARACHAND GHOSE v. ABDUL ALI** - - - - - viii 24

LIMITATION—continued.

15. — *Exclusion of day on which agreement was made.* In a suit for balance of an account stated, the defendant had given a written acknowledgment on 22nd July, 1867, that the sum sued for was due from him to the plaintiff. The plaint was presented on 22nd July, 1870. *Held*, the day on which the acknowledgment was made was to be excluded, and, therefore, the suit was not barred. **MADAN MOHUN DAS v. GAUR MOHUN SIKKAR**,

[vi 293 note]

16. — *Holiday—Act XI of 1865, s. 21.* By s. 21, Act XI of 1865, notice of application for a new trial must be filed within seven days from the date of the decision. When the decree was made on 6th November, and the Court was closed on 12th, 13th, 14th, and 15th, *held*, an application filed on the 16th was in time. **GIRIJA BHUSAN HOLDAR v. AKHAY NIKARI**,

[v Ap. 57 note]

LIMITATION REG. III OF 1793—Acknowledgment of debt. Where a plaintiff sued for a debt due under a karnama,—*held* that, in order to bring the case within the exception in the law of limitation, it was sufficient to show, by clear and positive proof, that within the period prescribed he had asserted his right to his claim under the karnama, and that the defendant admitted this claim to be as of right. It was not necessary that a precise sum should have been mentioned by either party, or that a promise to pay should have been made by the defendant. **GUPKISHEN GOSWAMI v. BRINDABUN CHANDRA SIKKAR CHOWHRY**,

[iii P. C. 37]

2. — *Hindu widow—Period of successive minorities.* In a suit instituted before Act XIV of 1859 came into operation, the periods of successive minorities might be deducted in reckoning the term of limitation. *R.* holding ancestral estates in Bengal, jointly with his brothers as an undivided Hindu family, died, leaving a widow, *S.*, and three unmarried daughters, *B.*, *S. M.*, and *N.* On her husband's death, *S.* continued to reside with his brothers, and was supported out of the income of the joint estate. During the lifetime of *S.* her daughters married, and *B.* became a widow without having had a child. After *S.*'s death, and during the lifetime of *S. M.*, *N.* also became a childless widow. *S. M.* died after her mother, leaving a son, *R. K.* *R. K.*, on attaining majority, sued to recover with meane profits a 4-anna share in the ancestral estates to which he claimed to be entitled on his mother's death as heir of *R.*, and from which he alleged that he had been dispossessed by the representatives of *R.*'s brothers, whom he made defendants in the suit, joining *B.* and *N.* with them as co-defendants. Some time after the institution of the suit, a petition was filed, purporting to proceed from *B.* and *N.*, by which they admitted that the plaintiff was the heir of *R.*, and that they had no defence to offer. *Held*, that limitation could not be taken to have run against the plaintiff's claim during the lifetime of *S.*, who, in the absence of proof

LIMITATION REG. III OF 1793—continued.

that she had received only maintenance, as distinguished from participation in the profits of the estate, must be presumed to have had possession of the share in the estate which she inherited as her husband's widow. *Quære*—Whether, if *N.* had been considered as having relinquished her rights, she would not, at the time of the relinquishment, have been barred by limitation. *AMITOLAL BOSE v. RAJONEE-KANT MITTER* - - - xv P. C. 10

—, s. 14—*Merne profits.*] Plaintiff sued for and recovered possession of land. He afterwards sued for *merne profits*. *Held per* PEACOCK, C. J., and NORMAN and SETON-KARR, JJ., (*dissentientibus* STREER and KEMP, JJ.), that, under Reg. III of 1793, s. 14, the plaintiff was entitled to recover *merne profits* for twelve years prior to suit, excluding from such computation the period of the pendency of the suit for possession from the date of the plaint till the final decree. *ANNADA GOBIND CHOWDHRY v. RANI SWARNAMAYI; ABHAY GOBIND CHOWDHRY v. RANI SWARNAMAYI*, Sup. Vol. 7

LIMITATION REG. VIII OF 1799—Ineffectual execution proceedings in summary suit—Reg. VIII of 1819, s. 18, cl. 4—Cause of action.] In a summary suit under Reg. VII of 1799, the plaintiff obtained a decree against his gomasta for certain moneys due from the latter, but failed in execution to recover the amount. He accordingly brought a regular suit under cl. 4, s. 18, Reg. VIII of 1819, in order to make the immovable property of his gomasta available in satisfaction of the debt. *Held*, his cause of action in the regular suit was the same as his cause of action in the summary suit, and that the period of limitation must be reckoned from the time when that cause of action accrued, and not from the date of the summary decree, or from the time when the plaintiff discovered that he could not obtain satisfaction of such decree. *SREENATH GHOSAL v. BISSONATH GHOSH* - - - Sup. Vol. Ap. 10

LIMITATION ACT XXV OF 1857, s. 9—Act IX of 1871, s. 1—Minority, Disability arising from—Forfeiture of property of rebel—Repeal, effect of.] *B. S.*, the father of the plaintiff, who was in possession of an estate in Lohardugga, which had been granted to his ancestor by the Raja of Chota Nagpore, was, on the 10th December, 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be forfeited to Government. On the 16th April, 1858, *B. S.* having been arrested was tried and convicted on a charge of rebellion, and sentenced to death. The sentence was carried out on the 21st April, 1858, and an order was made on the same day by the Deputy Commissioner for the confiscation of his property. On the 1st April, 1872, a suit was instituted by the plaintiff, then a minor, to recover possession of the estate of his father *B. S.* *Held*, that the suit not having been instituted within one year from the seizure of the property, was barred by s. 9, Act XXV of

LIMITATION ACT XXV OF 1857, s. 9—continued.

1857, notwithstanding its repeal by Act IX of 1871. There being no exception in Act XXV of 1857 in favour of infants, the plaintiff was not entitled to deduct the time during which he was under the disability of minority. *THAKOOR KAPILNATH SAHAI DEO v. GOVERNMENT* - - - xlii 446

LIMITATION ACT IX OF 1859, s. 20—Disability of minority—Forfeiture of rebel's property.

Certain property, in the actual possession of a rebel, was confiscated by the Government in 1858. In a suit brought on 1st May, 1865, to recover the property, it appeared that the plaintiffs were the sons and heirs of one *M.*, who died in 1854, legally entitled to, though not in possession of, the property in question; that, at the date of his death, and at the date of the confiscation, the plaintiffs were minors, and that they came of age in 1861, and February, 1864, respectively. *Held*, that the suit not having been brought within one year from the date of the confiscation, was barred by s. 20, Act IX of 1859. There is no saving clause in Act IX of 1859 with respect to minors or parties under disability to sue, and such saving cannot be held to be implied upon any principle of equitable construction; nor can the saving clauses, contained in the general Limitation Act XIV of 1859, be imported into a special enactment. Act IX of 1859 is plainly retrospective in its operation, and applies to claims to forfeited property which had been confiscated before its passing. *MAHOMED BAHAUDUR KHAN v. COLLECTOR OF BAREILLY* - - - xlii P. C. 293

LIMITATION ACT X OF 1859—Suit for rent.

The limitation in a suit for arrears of rent brought in the Collector's Court under Act X of 1859, is that provided by s. 32 of that Act, and not that provided by Act XIV of 1859. *UNNODA PERSAUD MOOKERJEE v. KRISTO COOMAR MOTTEO* - - - xv P. C. 60 note

2. — The period of limitation specified in Act X of 1859 has reference exclusively to suits brought under that Act. *PROBONNO COOMAR PAL CHOWDHRY v. MUDDUN MOHUN PAL CHOWDHRY* - - - xi Ap. 31 note

3. — *Date of passing of Act.*] The period of limitation within which a suit might be brought for rent due at the time of the passing of Act X of 1859, must be reckoned from 29th April, 1859 (the date of the passing of the Act), and not from 1st August, 1859 (the date on which the Act came into operation). *LACHMIPAT SING v. MAHOMED MOONEER* - - - Sup. Vol. 32

—, s. 28—*Suit for resumption of rent-free tenure—Reg. XIX of 1793, s. 10—Reg. II of 1819, s. 30—Onus probandi.*] In a suit brought in the Civil Court before Act XIV of 1859 came into operation, to enforce a right under s. 10, Reg. XIX of 1793, — that is, to resume lands alleged to be held by the defendant under an invalid lakhiraj grant, — *held*, that the suit was not barred by s. 28,

LIMITATION ACT X OF 1859, s. 32—continued.

Act X of 1859. The onus is on the plaintiff to prove that the case falls within s. 10, Reg. XIX of 1793,—i. e., that the grant was made subsequent to December 1st, 1790. **PARBATI CHARAN MOOKERJEE v. RAJKRISHNA MOOKERJEE** - - - - - Sup. Vol. 162

—, s. 30—*Suit for ejectment.*] In 1857 the plaintiff gave a lease of a garden to defendant, who agreed to plant, within five years from the date thereof, 2,000 betel-nut trees. The defendant failed to do so. In 1867, the plaintiff brought the present suit for ejectment, on account of the breach of the contract entered into by the defendant. *Held* that, by s. 30, Act X of 1859, the suit was barred by limitation. **KALI KAMAL MAZUMDAR v. SHIB SUHAISUKUL** - - - - - iii Ap. 47

—, s. 32—*Sale afterwards set aside—Subsequent suit for arrears of rent.*] A., a zemindar, sold the rights of B., his patnidar, for arrears of rent under Reg. VIII of 1819. This sale was subsequently set aside at the suit of B. for irregularity. A. then sued B. for the arrears under Act X of 1859, and B. raised the defence that the suit was barred, more than three years having elapsed from the close of the year in which the arrears became due. *Held* (reversing the decision of the High Court) that, upon the setting aside of the patni sale, the patnidar took back the estate subject to the obligation to pay the rent, and that the particular arrears of rent claimed must be taken to have become due in the year in which that restoration to possession took place, and plaintiff could sue within three years from the close of that year. **SWARNAMAYI v. SHASHI MUKHI BARMANI**, [ii P. C. 10]

2. — *Cause of action—Suit for enhancement of arrears of rent.*] A suit for arrears of rent at an enhanced rate, brought more than three years after the rent had accrued due, was held to be barred by lapse of time under s. 32 of Act X of 1859, notwithstanding that it was commenced within one year from the date of a decree made in a suit brought in the Civil Court declaring that the plaintiff was entitled to enhance. The cause of action was the nonpayment of the rent at the enhanced rates, and not the declaration of the Civil Court that the plaintiff had a right to enhance. **DOYAMOYEE CHOWDRAINEE v. BHOLANATH GHOSE** - - - - - Sup. Vol. 692

3. — The plaintiff had sued the defendant at the end of the year 1272 to recover arrears of rent for 1271, and to eject him for nonpayment. The litigation lasted till 1276, when the plaintiff obtained a decree, which, however, was not executed, as the defendant paid the amount and costs within fifteen days. In 1276 the plaintiff brought this suit to recover the rents of 1272 and of subsequent years. *Held*, that the plaintiff's claim for the rents of 1272 was not barred by the lapse of three years, under s. 32, Act X

LIMITATION ACT X OF 1859, s. 32—continued.

of 1859. **DINDAYAL PARAMANIK v. RADHA KISHORI DEBI** - - - - - viii 536
ISHAN CHANDRA ROY v. KHAJA ASHANULLA, [viii 537 note

—, s. 33—*Accounts.*] S. 33, Act X of 1859, gives the benefit of the extended period of limitation to a man who shows reasonable diligence, but not to one who having the means of knowledge carelessly neglects to investigate the accounts. **DHANPUT SINGH DOGAR v. RAHMAN MANDAL** - - - - - ii A. C. 269
S. C. before remand - - - - - ii A. C. 270 note

—, s. 77—*Suit in Civil Court for right to rent.*] The year within which under s. 77, Act X of 1859, a party may sue in the Civil Court to establish his title to the rent of the land or tenure is one year from the date of the final decision against him. **DINANATH BOSE v. KALIKUMAR ROY** - - - - - Sup. Vol. 364

LIMITATION ACT XIV OF 1859—Application of.] The provisions of the Limitation Act XIV of 1859 do not apply to suits for arrears of rent under Act X of 1859, nor are the provisions of Act X of 1859 in any way affected by the provisions of Act XIV of 1859. **POULSON v. MADHUSUDAN PAL CHOWDHRY**, Sup. Vol. 101
See **UNNODA PERSAUD MOOKERJEE v. KRISTO COOMAR MOITRE** - - - - - xv P. C. 60 note

2. — *Construction of.*] The applicability of the particular sections of Act XIV of 1859 must be determined by the nature of the thing sued for, and not by the status, race, character, or religion of the parties to the suit. **FUTTEH-SANGJI JASWANTSANGJI v. DESAI KULLIAN-RAJJI HAKOUMUTRAJI** - - - - - xiii P. C. 254

—, s. 1, cl. 2.

See INJUNCTION.

2. — *Suit for recovery of salary—Servant.*] The defendant, who was a batwarra ameen employed by the Collector, drew from the public treasury at Backergunge a sum of money to pay the establishment, but failed to pay the plaintiff, who was a mohurir under him. In a suit against the ameen for recovery of his salary after a lapse of three years from the time when the salary became due,—*held*, that the plaintiff was not a servant within the meaning of cl. 2 of s. 1, Act XIV of 1859. **ABHAYA CHARAN DUTT v. HARO CHANDRA DAS BUNIK**, [iv Ap. 68]

3. — *Salary, suit for—Collector of rent or tehsildar.*] In a suit by a tehsildar or collector of rent to recover arrears of salary, *held*, that the suit was not one to recover the wages of a servant to which s. 1, cl. 2, Act XIV of 1859, would apply, a tehsildar not being a servant within the meaning of that section. **ARUN CHANDRA MANDAL v. RAMANATH RAKHIT** - - - - - i S. H. xx

4. — *Suit for damages for malicious prosecution.*] In an action for damages for making a false and malicious statement in consequence of which the plaintiff's house was searched, and he alleged he was thereby injured in various ways, the alleged false statement was found

LIMITATION ACT XIV OF 1859, s. 1, cl. 2—*contd.*

to have been made more than one year previous to the suit, and there was nothing to show that any of the resulting damage which would constitute a cause of action occurred within a year before the suit. *Held*, that the action was barred by s. 1, cl. 2, Act XIV of 1859. The cause of action did not arise from the date of the plaintiff's discharge. **HARINARAYAN MAITI v. AJODHYA RAM SHI** — — — i S. N. xvii —, s. 1, cl. 5.

See ACT XIX OF 1841.

2. — [Claim.] On attachment of certain property, the plaintiff and defendant preferred their respective claims thereto. The plaintiff's claim was disallowed; but the defendant's claim was allowed. The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was, that the suit was barred by lapse of time under cl. 5, s. 1, Act XIV of 1859. *Held*, that cl. 5, s. 1, Act XIV of 1859, did not apply to such a suit. **DURGARAM ROY v. RAJA NARISING DEB.**

[ii A. C. 254]

—, s. 1, cl. 6—[Survey award—Suit for possession—*Res-judicata*] In a thakbust map land was demarcated as belonging to A. B. claimed that it belonged to him jointly with A. On 18th November, 1858, the map was rectified by demarcating the lands to A. and B. jointly. B. afterwards brought a suit against A. in the Munsif's Court to recover the value of some mangoes which grew on two plots of the land in question; and it was decided on 12th December, 1864, in favour of B., on the ground that the plots belonged to A. and B. jointly. On 11th December, 1865, A. brought his suit against B. for a declaration of right and confirmation of possession, to set aside the survey award, and for amendment of the thakbust map. A. alleged that he was no party to the thakbust proceedings, and that he had been in possession ever since. *Held* (overruling the decision of the Courts below) (1) that A. was not estopped by the decision of 12th December, 1864; (2) that the suit was barred, so far as it asked to have the thakbust map amended, under cl. 6 of s. 1; (3) that a suit by a person in possession to have his title confirmed is not a suit to recover property within cl. 6 of s. 1, and is not barred by reason of its not being brought within three years from the date of the award. **MAHIMA CHANDRA CHUCKERBUTTY v. RAJKUMAR CHUCKERBUTTY** — — — i A. C. 1

2. — [Survey award, appeal from — Co-sharers.] A. and B. were similarly affected by a survey award. A. appealed, but B. did not. *Held*, in a suit by B. and his co-sharers to set aside the award, that B. could not compute the period of limitation from the date of the order on A.'s appeal. *Held* also, that B.'s co-sharers, though they did not appear in the proceedings of award, were bound, if they sued at all, to sue within the three years prescribed by the law. **TULSIRAM DAS v. MOHAMED AFZAL, alias MIRZA** i A. C. 12

LIMITATION ACT XIV OF 1859, s. 1, cl. 6—*contd.*

3. — [Cause of action, date of.] A. appealed from the award of a survey officer to the Commissioner, who summarily rejected the appeal. The order of the Commissioner was confirmed by the Board of Revenue without entering into the merits. *Held*, that the period of limitation ran from the date of the order of the Board of Revenue. **KRISHNA CHANDRA DAS v. MAHOMED AFZAL** i A. C. 11

4. — [Survey award—Suit for reversal of, and for possession.] Where A. sued for reversal of a survey award, and for recovery of possession, alleging dispossession subsequent to the date of the award,—*held*, that his suit is not barred by reason of its being brought beyond three years from the date of the award. **MOZAFFUR ALLY v. GIRISH CHANDRA DAS** — — — i A. C. 25

—, s. 1, cl. 7—[Order in suit under Act IV of 1840—*Benamidar*.] N., in 1852, purchased from R. a patni talook in the name of H. In 1854 N. died leaving two sons, one of whom was K., and a widow. The sons allowed the widow to remain in possession. In December, 1854, R. made a complaint before the Magistrate, under Act IV of 1840, against H., K., and others, stating that they had dispossessed him of the talook on 27th December, and the Magistrate thereupon ordered H. and the other defendants except K. to put R. in possession. On 12th January, 1855, R. obtained possession and sold the property. On 28th December, 1866, K. and his brother sued H., R., and the purchaser to recover possession. *Held* (reversing the decision of the Courts below), that the suit was not barred by s. 1, cl. 7 of Act XIV of 1859. The mere fact that the Act IV award was passed against H., a benamidar of the plaintiff, was not sufficient to show that they were bound by that award unless evidence was given that they gave authority to H., express or implied, to act in the matter on their behalf. **RAJENDRONATH MALIK v. RAKHAL DAS SIKHAR** — — — ii S. N. i

—, s. 1, cl. 8—[Suits for arrears of rent.] Suits for arrears of rent are to be instituted within three years from the last day of the Bengal (or other) year in which the arrears claimed shall have become due. **GOBIND KUMAR CHOWDHRY v. HARGOPAL NAG,**

[iii Ap. 72]

2. — [Beng. Act VIII of 1869, s. 29—Suit for arrears of rent.] Where a part-proprietor of a certain talook, who was also a co-sharer in a fractional portion thereof, brought suits against his co-talookdars in the Revenue Court for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction, and afterwards brought a suit for the rent for the same period in the Civil Court,—*held*, that the suit was not one for the recovery of arrears of rent within the meaning of s. 29, Beng. Act VIII of 1869, but was governed by the provisions of Act XIV of 1859. The suit was one for rent of

LIMITATION ACT XIV OF 1859, s. 1, cl. 8—contd.

land, and fell within the scope of cl. 8, s. 1 of that Act. **GOBINDO COOMAR CHOWDREY v. MANSON** - - - - - x 56

—, s. 1, cl. 9—*Accrual of cause of action.*] In a suit brought on the 29th July, 1867, to recover back a deposit of purchase-money paid in September, 1863, it appeared that the vendor had re-sold the estate, and that the plaintiff thereupon sued for and obtained a decree for specific performance against the vendor and the purchaser at the re-sale. On appeal by the purchaser at the re-sale this decree was reversed on the 29th August, 1865. *Held*, that the suit to recover back the deposit was not barred under cl. 9, s. 1, since the cause of action for its recovery did not accrue till 29th August, 1865. **RAMJAY DEY v. SRINATH SING.**

[ii A. C. 170

2. — *Cause of action—Prompt dower.*] The cause of action in respect of prompt dower arises upon a demand by the wife and a refusal by the husband. In this case there was a demand by the wife and a refusal by the husband, *viz.*, in their petition of 3rd May and 1st July, 1861, respectively, more than three years before suit, therefore the claim to prompt dower was barred by cl. 9, s. 1 of Act XIV of 1859. **AMEERONISSA v. MOORADOONISSA** (6 Moore's L. A. 211) distinguished. **KHLIARANNISSA v. RISANNISSA BEGUM** - - - - - v 84

3. — *Cause of action—Deposit—Demand.*] Where money has been deposited by A. at interest with B., repayable on demand, and interest is paid accordingly, the cause of action arises not on the date of the deposit, but on the date of demand. **TARINI PRASAD GHOSE v. RAM KRISHNA BANERJEE** - - - - - vi 160

4. — *Cause of action—Mode of computing period of limitation—Promissory note payable on demand.*] The plaintiff sued on a promissory note payable on demand, dated 14th November, 1867. The plaint was filed on 14th November, 1870. *Held*, that the period of limitation was to be computed from the expiration of the day on which the note was made, and therefore the suit was not barred under cl. 9, s. 1 of Act XIV of 1859. **TARACHAND GHOSE v. ABDUL ALI** - - - - - viii 24

See S. C. in Court below. **ABDUL ALI v. TARACHAND GHOSE** - - - - - vi 293

5. — *Cause of action—Deposit—Demand—Hindu law.*] The plaintiff, a Hindu widow, on 26th March, 1866, sold to the defendant certain lands for Rs. 800. The price was paid to the plaintiff, who on the same day lent it to the defendant under an agreement that she should receive Rs. 6 monthly by way of interest, and that the principal sum should be repayable on demand. Interest was paid up to April, 1869, but afterwards discontinued. The plaintiff thereupon demanded payment of the principal sum of Rs. 800, but payment was refused by the defendant. On July 4th, 1870, the plaintiff sued for the recovery of the principal sum lent, with interest from the date when it was withheld up to the date of suit. *Held*,

LIMITATION ACT XIV OF 1859, s. 1, cl. 9—contd.

that the obligations to pay Rs. 6 a month by way of interest, and to repay the principal on demand, must be construed to be alternative obligations. In this view of the contract a demand was necessary to complete the cause of action, and the cause of action arose at the date of the demand; the suit, therefore, was not barred by Act XIV of 1859, s. 1, cl. 9. *Per* NORMAN, J.—By Hindu law a demand would be necessary. **BRAMMAMAYI DAS v. ABHAI CHARAN CHOWDREY** - - - - - vii 490

But see **PARBATI CHARAN MOOKERJEE v. RAMNARAYAN MATILAL** - - - - - v 396

6. — *Breach of contract—Del credere agent.*] Where a broker was sued for a balance of account, his liability being based on the receipt of a *del credere* commission, *held*, that the suit was for breach of contract within the meaning of cl. 9, s. 1 of Act XIV of 1859, and the period of limitation must be calculated from the date of the last item in the account. The contract not being in writing, the suit, which was brought more than three years from such date, was barred. **OKOOR PERBAUD BUS-TOOREE v. FOOL KOOMAREE DABEE**— x P. C. 16

—, s. 1, cl. 9 and 10—*Sale by wholesale—Breach of contract.*] A suit to recover the price of goods sold wholesale is a suit for a breach of contract within cl. 9 and 10 of s. 1, Act XIV of 1859, and if there be no written contract, the period of limitation is that provided by cl. 9, *viz.*, three years from the time when the cause of action accrued. **LALMOHUN HOLDAR v. MAHADEB KATEE** - - - - - Sup. Vol. 909

3. — *Breach of contract—Cause of action—Damages.*] In a suit for breach of a contract to be performed at different times, the period of limitation must be calculated from each breach of contract as it arises. Where there is a contract for performing certain duties in each of several years, each breach of the contract is a complete cause of action, and damages are recoverable for each breach separately. **MAHI SAHU v. FORBES** - - - - - Sup. Vol. 600

On this clause see also **LUKHINARAIN MITTER v. KHETTRO PAL SING ROY** xiii P. C. 146

—, s. 1, cl. 10.

See s. 1, CL. 16.

2. — *Money payable by instalments.*] In a suit for recovery of a certain sum of money, the present defendant intervened by a petition agreeing to pay the whole amount due on the bond if the first instalment was not paid by the debtor on the 16th of December, 1863. In this suit, brought on the 11th of April, 1867, for recovery of the whole amount, *held* that, under cl. 10, s. 1, Act XIV of 1859, the claim was barred. **GAUR HARI DAS v. MADAN MOHAN BISWAS** - - - - - iii A. C. 16

3. — *Promissory note—Registration Act XVI of 1864, s. 16.*] A promissory note is a "contract or obligation" under s. 16, Act XVI of 1864, and as such might have been registered under that Act, consequently the period of limitation prescribed by cl. 10, s. 1, Act XIV

LIMITATION ACT XIV OF 1859, s. 1, cl. 10—contd.

of 1859, viz., three years, applies to it. **PYARI CHAND MITTER v. FRASER** - vi Ap 40
See **LESLIE v. PUNCHANUN MITTER** vi 668

—, s. 1, cl. 12.

See ACT XIX OF 1841.**HINDU LAW, ALIENATION.**

2. — *Hindu widow—Adopted son—Possession.* A Hindu died after leaving directions to his widow to adopt a son. Upon a partition of the joint property amongst his brothers and widow, a certain property was allotted to his widow as her share of the joint property. Afterwards, in 1849, his brothers dispossessed the widow. In 1861, she adopted a son, who attained his majority in 1865, and in 1866, instituted the present suit for possession of the property. *Held*, that the suit was barred by lapse of time. **GOBIND CHANDRA SARMA MAZOOMDAR v. ANAND MOHAN SARMA MAZOOMDAR** - ii A. C. 313

3. — *Possession.* In a suit for possession of certain lands purchased by the plaintiff at a sale in execution of a decree of the Sudder Ameen's Court, the lower Court held that possession by proclamation of sale through the Sudder Ameen's Court, was "possession through the Court," and that the suit, being brought within twelve years of that proclamation, was in time. *Held* on appeal, that such imaginary possession was no possession at all, and that the suit was barred by limitation. **JOWHER ALI v. RAMCHAND**,
 [ii Ap. 29]

4. — *Adverse possession.* A. became a bairagi, and went on a pilgrimage. He alleged that before his departure he made over his property to B., on the condition that it should revert to him on his return. B. sold it to C. Upon his return after several years, A. claimed the property from C., who refused to give up possession. D. purchased A.'s rights, and then sued the widow of C. to obtain possession. She denied that the property was made over to B. upon trust for A. on his return, and contended that the suit was barred under cl. 12 of s. 1 of Act XIV of 1859. The lower Appellate Court held, that it was not barred, on the ground that B.'s possession was not adverse. On special appeal, the case was remanded, that it might be found whether B. had been in possession in trust for A., or adversely to him, for more than twelve years. **JAGANNATH PAL v. BIDYANAND** - i A. C. 114

5. — *Adverse possession—Mokurari title—Onus probandi.* The plaintiff purchased a mauza from the proprietor in 1869, and now sued to obtain possession from the defendant, who was proved to have held under a ticoa lease down to 1856, and who now claimed to hold under a mokurari lease, which he said was granted by the former proprietor in 1859. The plaintiff failed to prove possession by his vendor within twelve years of suit brought, and therefore the Courts below dismissed his suit. On special appeal it was

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

held that the defendant before succeeding on the question of limitation ought to have shown that the plaintiff had notice of the mokurari title set up. The case was sent back to the Court below to try the validity of that title. **DHANUK DHARI SINGH v. GAPI SINGH** - - - vi Ap. 161
See **PRAHLAD SEN v. RUN BAHADUR SINGH**,
 [ii P. C. 111]

6. — *Lessee under Government.* A. claimed certain immovable property as lessee, under a Government settlement made in 1859. B. had been in possession for more than twelve years before the institution of the suit. *Held*, that the suit was barred under cl. 12 of s. 1. **ASU MIA v. RAJU MIA** - - - i A. C. 34

7. — *Suit for possession—Interrupted adverse possession.* In a suit to recover possession of immovable property, the defence was adverse possession for more than twelve years, except for two short periods, during which plaintiffs had been put in possession by a Civil Court: first, under a decree of the High Court between the same parties, but that they had been dispossessed upon that decree being reversed on review; and second, under a misconception, by the Principal Sudder Ameen, of another order of the High Court, in another suit between the same parties; but that they had again been dispossessed after appeal by defendant to the High Court. *Held*, *per* LOCH, J., (GLOVER, J., dissenting) that plaintiff's possession during those two periods was not *bona fide*, and that the suit was barred. **MATI SINGH v. LILANAND SINGH** ii A. C. 173

8. — *Suit for dower—Wrongful possession.* In a suit to recover the balance of dower-money, it appeared that the plaintiff's husband died in 1845, and the suit was instituted in 1867; and that the plaintiff had been in possession of her husband's estate in lieu of dower up to 1861, and had continued in possession, under a compromise with the heirs, till 1866. It appeared, however, that in another suit she had been declared not entitled to possession. *Held*, her suit was barred. **KALSUMNISSA v. WAHIDUNNISSA** iii A. C. 176 note

9. — *Immovable property—Toda giras hak.* The expression 'immovable property' in Act XIV of 1859, s. 1, cl. 12, must not be construed as identical with 'lands or houses.' It comprehends all that would be real property according to English law, and possibly more. A *toda giras hak* being a right to receive an annual payment, the liability for which is not a mere personal liability, but one which attaches to the *inamdar* into whose hands the village may pass, is 'an interest in immovable property' within the meaning of cl. 12, s. 1, Act XIV of 1859. **FUTTEHSANGJI JASWANTSANGJI v. DESAI KULLIANRAJI HAKOOMUTRAJI** xiii P. C. 254

10. — *Malikana—Recurring cause of action.* *Held* (by GLOVER, J.), that *malikana* is rent under Reg. VIII of 1793; that a cause

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

of action for recovery of arrears of malikana is a recurring cause of action; and that failure to recover arrears for more than twelve years would not bar the right to recover for such period as has not been barred by the Statute—cl. 16, s. 1, Act XIV of 1859—that is, for a period of six years. *Held* (by KEMP, J.) that the suit was barred, as no malikana had been paid for more than twelve years. *Bhuli Singh v. Nehmu Behu* (iii Ap. 102). *Held* on appeal, that a suit for the recovery of malikana is barred by limitation if the malikana has not been received for a period of twelve years. **BHULI SINGH v. NEHMU BEHU,**

[iv A. O. 29]

11. — *Possession, suit for—Civil Procedure Code, s. 224.* A suit for possession of immoveable property is not barred by the law of limitation if the suit be brought within twelve years of possession having been delivered to the plaintiff under S. 224, Act VIII of 1859, or if possession by the plaintiff has been admitted within twelve years by the party through whom the defendant claims. **BINDUBASHINI DAS v. RENNY** - - - - - vii Ap. 20

12. — *Mortgage—Suit for possession—Foreclosure—Reg. XVII of 1806, s. 8—Cause of action.* A., by a Bengali deed of conditional sale dated the 10th of August, 1858, mortgaged two estates, the deed providing that the mortgage-debt should be repaid on the 9th of July, 1865, and that, on default of payment, the deed of conditional sale should become one of absolute sale, and that the mortgagee should thereupon acquire the absolute proprietary right, and might enter upon and retain possession of the mortgaged property. A. failed to pay at the time stipulated, and on the 18th of December, 1866, her right, title, and interest in the estates were sold in execution, and purchased by the defendants without notice of the mortgage. On the 3rd of April, 1866, the plaintiff bought the mortgagee's interest, and in August, 1867, he instituted foreclosure proceedings under Reg. XVII of 1806, against the defendants, the auction-purchasers. In a suit instituted by the plaintiff on the 22nd January, 1874, against the auction-purchasers, to recover possession of the mortgaged property, *held*, that the cause of action arose on 9th July, 1865, when default was made in payment of the mortgage-debt, and the suit not having been instituted within twelve years from that date, was barred by s. 1, cl. 12, Act XIV of 1859. No new cause of action arose by reason of the foreclosure proceedings on the expiry of the year of grace in August, 1868. **DENONATH GANGOOLY v. NUBSING PROSHAD DASS** - - - - - xiv 87

13. — The defendant mortgaged certain immoveable property to the plaintiff by a *bye-bil-wafa*, or deed of conditional sale, dated 20th January, 1851. The deed stipulated that the mortgage-debt should be repaid on the expiration of three years from the date of the execution. The money was not repaid at the stipulated period, and the mortgagor remained in pos-

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

session of the property, but there was some evidence to show that he had made payments of interest on the mortgage-debt to the plaintiff. In February, 1870, the plaintiff took proceedings to foreclose the mortgage, and on 16th February, 1872, he instituted a suit for possession of the property. The defence was that the suit was barred, the plaintiff having been out of possession for more than twelve years previous to the institution of the suit. *Held*, that payment and acceptance of interest was evidence of the continuance of the relation between the parties created by the mortgage-deed, and until the mortgagor advanced any rights adverse to the mortgagee, the possession of the mortgagor was permissive, and no cause of action accrued to the mortgagee. **MANKEE KOORER v. SHEIKH MUNNOO** - - - - - xiv 215

14. — *Cause of action—Suit for possession and declaration of right to participate in permanent settlement of a mahal resumed under Reg. II. of 1819.* Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government in 1835, and declared to be liable to assessment under Reg. II of 1819. The recorded proprietors of the adjoining permanently settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time, and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements, and also reserved an allowance of ten per cent. on the rent as malikana on their account, which sum had been kept in deposit in the Collectorate treasury. In 1867 Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur, and refused the application of other shareholders in the estate to be joined in the settlement. The Collector, at the request of the defendants, applied the deposit in his treasury in satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession and a declaration of his right to participate in the settlement. *Held*, that the suit was not barred, the period of limitation commenced from the date of the settlement with the defendant. **KRISHNA CHANDRA SANDYAL CHOWDEY v. HARISH CHANDRA CHOWDEY,**

[viii 524]

15. — *Landlord and tenant—Receipt of rent.* A., a Hindu, died, leaving his widow, B., and mother, C. B. adopted D. C. granted a patni patta to E. of certain property belonging to the estate of A. During the minority of D., B. received the rent from E., and afterwards D., on attaining majority, realized rent from E. by suits under Act X of 1859. Twelve years after attaining majority, D. sued for cancellation of the patni lease, and for obtaining khas possession of the property. *Held*, that the suit

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

was not barred. **BUNWARI LAL ROY v. MAHIMA CHANDRA KNUALL** - iv Ap. 86

16. — *Purchaser from mortgagor—Adverse possession.*] Where a party *bona fide* purchased from another as his own property land, in fact mortgaged, and obtained possession and mutation of names, his title was held to be adverse to the mortgagee. After a *bona fide* purchaser had been in open possession more than twelve years, and after the lapse of more than twelve years from the accrual to the mortgagee of the right of entry under the mortgage-deed (which was in the English form), the mortgagee sued the purchaser to obtain possession of the property. *Held*, the suit was barred. *Quere*.—Whether in cases in the mofussil, where the mortgagor continues in possession paying rent to the mortgagee, the law of limitation begins to run from the date of the right of entry? **BRAJANATH KUNDU CHOWDERY v. KHILAT-CHANDRA GHOSH** - - - viii P. C. 104

17. — *Adverse possession—Purchaser at a sale in execution of decree.*] The possession of a purchaser at a sale in execution of decree, without notice of a mortgage of the property, is adverse to the mortgagee, and a suit to disturb his possession must be brought within twelve years of the commencement of such possession. **ANAND MAYI DAS v. DHARENDRA CHANDRA MOOKERJEE** - - - viii P. C. 123

18. — *Reversioner—Hindu widow.*] Where, after the death of a Hindu who had been separate in estate from his brothers, and during the lifetime of his widow, his brother's sons obtained mutation of their names on the Collector's rent-roll, and held possession of the estate in right of inheritance for more than twelve years,—*held* that, under the Mitakshara law, the possession by the nephews being adverse to the widow, the claim of the reversioner on her death was barred. **GOPAL SINGH v. KANHYA LAL SAHEBZADA** - - - ii Ap. 14

19. — *Landlord and tenant—Adverse title set up by tenant.*] Where a landlord sued, after the lapse of more than twelve years from the date of his knowledge that a tenant was setting up a *mokurari* title, for a declaration that the alleged *mokurari* title was invalid, *held*, that the suit was barred by lapse of time. **NAZIMUDIN HOSSEIN v. LLOYD**, [vi Ap. 130

20. — *Unregistered bond charging land with repayment of debt—Suit for sale of land—Interest in immoveable property.*] Where there is an unregistered bond to secure the payment of a sum of money with interest, by which bond also lands are charged by way of simple mortgage with the payment of the debt, a suit to have it declared that the lands are charged with the payment of the debt, and for an order for the sale of the lands in satisfaction of the debt, is a suit for the recovery of "an interest in immoveable property" within the meaning of Act XIV of 1859, s. 1, cl. 12, and the period of limitation is

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

twelve years from the time when the debt became due. **SURWAR HOSSEIN KHAN v. GHOLAM MAHOMED** - - - Sup. Vol. 379

21. — In a suit for a mere personal decree for debt, and for sale of mortgaged property, the suit, so far as it asked for a personal decree, was dismissed, but was allowed to proceed on the other issues as not being barred by limitation. **MANNU LALL v. PEGUE**, [ix 175 note

22. — *Agreement defining shares of parties in immoveable property—Deed of compromise.*] An agreement by way of compromise of disputed title to immoveable estate, under which shares are allotted to the parties thereto, gives to each party a cause of action founded not merely upon contract within the meaning of Act XIV of 1859, s. 1, cl. 10, but upon the title which is acknowledged and defined by the agreement, and a suit brought to recover a share of the estate is governed by s. 1, cl. 12. **MEWA KOWAR v. HULAS KOWAR**, [xiii P. C. 313

23. — *Adverse possession—Cultivated and uncultivated lands—Ghatwals.*] The owners of a *patni* of Bishenpore sued to set aside a survey award and alter a map (1855) which demarcated certain lands as cultivated and uncultivated belonging to Government, and in the possession of ghatwals. Certain ghatwali lands, part of the *zemindari* of Bishenpore, had been given up to the Government by the *zemindars* in 1802, and the ghatwals had since paid a quit-rent to Government for the same. The plaintiffs became purchasers of the *patni* in 1839 under a sale for arrears. They admitted that, as to the uncultivated lands, they had never been in actual possession or in the receipt of any rents since they purchased, but they alleged that, from that time, the ghatwals fraudulently or dishonestly refused to pay them rents in respect of the cultivated lands, as they had done to their predecessors; and that the ghatwals had encroached upon the uncultivated lands. The ghatwals, on the other hand, stated that they never had paid rent to the *patnidar*, and that the lands were all included within those for which they paid a quit-rent to Government. *Held* (LOCH, J., dissenting), that the ghatwals, if proved to have been the tenants of the plaintiffs or their predecessors, could not acquire a title against them by adverse possession of twelve years. *Per* PEACOCK, C. J.—The issues are: (1) whether the ghatwals paid rent for the cultivated lands to the *patnidar*; (2) whether the cultivated or uncultivated lands form part of the *patni* estate; (3) whether the ghatwals were in possession of the uncultivated lands from 1839, or for a period exceeding twelve years before the commencement of the suit; (4) whether they paid rent for the same to the *patnidar*. **WATSON v. GOVERNMENT** - - - Sup. Vol. 182

24. — *Suit to recover possession—Sale in execution—Civil Procedure Code, ss. 249, 259, 264, and 269.*] In execution of a decree ob-

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

tained against A. his right, title, and interest in certain property were sold, but the certificate of sale erroneously recited that A. and B.'s ancestor were defendants in the suit, and that the interest of the defendants in the suit had been sold: and, accordingly, the purchaser was put in possession, under s. 264, Act VIII of 1859, of the right, title, and interest of B.'s ancestor as well as of A. in the property. In a suit brought by B. for confirmation of title and recovery of possession after the lapse of a year, but within twelve years, from the date of dispossession, *held*, that the suit was not barred by lapse of time. **PROTAP CHUNDER CHOWDHRY v. BROJOLLOL SHAHA** - - - Sup. Vol. 638

25. — *Sale in execution of decree.*] When a suit to establish his title and to recover possession of property is brought by a person who has been dispossessed under a sale in execution of a decree against other persons, and no summary order has been made declaring the property liable to be sold in execution of such decree, the period of limitation applicable is that prescribed by cl. 12, s. 1, Act XIV of 1859,—*viz.*, twelve years from the date of dispossession. **JODOONATH CHOWDHRY v. RADHOMONEE DASSEE** - - - Sup. Vol. 643

26. — *Suit for possession and to set aside adoption.*] In a suit to set aside an adoption and to recover possession of immoveable and moveable property, the cause of action arises at the date of the adoption, and the suit must be brought within twelve years from that date. **ISWAR CHANDRA MITTER v. SHAMASUNDARI DAS** - - - iii A. C. 150 note

27. — *Accrual of cause of action—Suit to set aside adoption.*] A Hindu died, leaving a son (who afterwards died a minor, and unmarried), a widow, and three daughters. On the death of the minor, the widow succeeded to the property, and under a will of her late husband, adopted, in 1851, a son of her husband's brother. The widow died in 1866. One of the daughters, as guardian of her infant son born in 1853, brought a suit to set aside the will, and with it the adoption, and for recovery of possession of the property left by her minor brother; the defence set up was, that the will was genuine; that the plaintiff should have sued within twelve years from the adoption; and that she had in 1851 admitted the adoption in having accepted a *darpatni* from the guardian of the adopted son. *Held*, that the cause of action accrued on the death of the adoptive mother, and not from the date of the adoption. *Held*, that the acknowledgment of the adoption by the plaintiff before the birth of her son would not bar his right. **TARINI CHARAN CHOWDHRY v. SARODA SUNDARI DAS** - - - iii A. C. 145

28. — *Adverse possession.*] A Hindu of Tirhoot died in 1849, leaving two widows and a brother. A compromise was made by the three, whereby they agreed that the brother should remain in possession of the property left by the deceased; and that some land should be assigned

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

to the widows for maintenance. The elder widow died in 1867, and the younger sued the heirs of the brother for recovery of possession of the property. The defence set up was, that the suit was barred by limitation, as her cause of action arose not on the death of her co-widow, but on the death of her husband. *Held*, that as to recovery of possession of a moiety of the property, the cause of action arose on the death of the co-widow; that the possession of the elder widow was not adverse to the younger widow, as the elder widow was permitted to enjoy the possession of the husband's property during her lifetime, the younger widow receiving an allowance from the profits of the estate. **INDUBANSI KUNWAR v. GRIBHIRUN KUNWAR**, [iii A. C. 239

29. — *Suit by reversionary heirs—Possession by adopted son.*] A Hindu widow, in 1824, assumed to adopt a son to her husband, and such son, and after him, the defendant, his heir, was put in possession of the properties in suit. The widow died in 1861. The suit was instituted in 1866 to recover the property and to declare the adoption illegal. *Held*, that such possession during the life of the widow could not be said to be adverse as against the widow. The cause of action to the reversionary heirs arose at the time of the death of the widow, and was consequently not barred by limitation. **SRINATH GANGOPADHYA v. MAHESH CHANDRA ROY** - - - iv F. B. 3

30. — *Cause of action—Hindu law, alienation by widow.*] A., a Hindu widow, while in possession of the property left by her husband, sold a portion thereof. After her death, her daughter B. succeeded to the property, but took no steps to set aside the alienation made by her mother. After her (B.'s) death, her sons succeeded to the property, and instituted the present suit, after a lapse of thirty-six years from the death of A., but within twelve years from the death of B., to obtain possession of the property sold by A. *Held* (MITTER, J., dissenting), that the suit was barred. The cause of action arose when B. succeeded to the property. **RAJKISHOR DUTT ROY v. GIRISH CHANDRA ROY CHOWDHRY** - - - iv A. C. 136

31. — *Female heir—Adverse possession—Suit by reversioner—Liquidation.*] Adverse possession against a Hindu female heir, which would bar her right of suit if she were alive, will equally bar that of the reversioner. **NOBIN CHUNDER CHUCKERBUTTY v. GURU PERSAD DOSS** - - - Sup. Vol. 1003
RAM KANAI ROY CHOWDREY v. TRILOCHAN CHUCKERBUTTY - - - i S. N. xii

32. — A Hindu died leaving two daughters, who succeeded to their father's property. One sold her half share of the property and died in 1835; the other died in 1859, and her son instituted the present suit in 1867 for recovery of the half share which her sister had sold. The defence set up was, that the suit was barred by lapse of time, as the plaintiff's cause of action

LIMITATION ACT XIV OF 1859, s. 1, cl. 12—contd.

arose in 1835, or more than twelve years before the institution of the suit. *Held* (following a dictum in the Full Bench Ruling in *Nobin Chunder Chuckerbutty v. Gurn Persad Doss*) that the words 'cause of action' in cl. 12, s. 1, refer not to the new cause of action which accrues to the reversioner, but to the 'cause of action' which accrued to the tenant-for-life; and that the suit having been brought after a lapse of more than twelve years after the death of the tenant-for-life, was barred. **GANGA CHARAN ROY CHOWDHRY v. JAGARNATH DUTT** — — — iii A. C. 208

33. — Where a cause of action with regard to the husband's estate has once accrued to a Hindu widow, who nevertheless fails to assert her rights, no new cause of action arises to the heirs after her death. **TARINI CHARAN GANGULI v. WATSON** — — — iii A. C. 437
RAJKUNWAR v. INDERBIT KUNWAR — v 535

34. — [*Reversioners.*] Where a Hindu widow, who takes by inheritance from her husband, is dispossessed, the period of limitation as against the reversionary heir claiming the succession after the widow's death is, in the absence of fraud, to be reckoned, not from the time of the widow's death, but from the time from which it would have run against the widow had she lived and sued to recover the inheritance. **AMRITOLAL BOSE v. RAJONEEKANT MITTER**, [xv P. C. 10]

—, s. 1, cl. 13—[*Suit for share of joint ancestral property.*] A Hindu died in 1840 leaving him surviving seven sons, who, after their father's death, entered into joint possession of certain immovable property which had been left by him, and continued to live in communality until 1859, when a separation in mess took place. Subsequently, more than twelve years after the father's death, a suit was brought by the youngest son for his share of the joint ancestral property belonging to the father, and to property subsequently acquired out of the proceeds of such joint estate, to which the brothers were entitled in equal shares. The plaintiff failed to show that any payment was made to him or any person through whom he claimed by the person in possession or management of the property within twelve years before the commencement of the suit. *Held*, that the suit was barred by limitation under cl. 13, s. 1. **UMA SUNDARI DAS v. DWARKANATH ROY** — — — ii A. C. 284

2. — [*Mortgage by one member of Hindu family—Surrender of equity of redemption.*] Act XIV of 1859, s. 1, cl. 13, is intended to apply to suits between members of a joint family, not to a case where a mortgage having been made by one member on behalf of all to a stranger, that member afterwards, against the will of his co-partners, releases the equity of redemption. **RADHANATH DAS v. ELLIOTT**, [vi P. C. 530]

3. — [*Joint property—Suit for share of—Onus probandi.*] A suit to enforce a right to a share of joint family property must be

LIMITATION ACT XIV OF 1859, s. 1, cl. 13—contd.

brought within twelve years from the date of the last payment to the plaintiff, or the person through whom he claims, on account of the share; and the onus is on the plaintiff to show possession of the share, or receipt of a payment on account of it, within twelve years. It is not sufficient for the plaintiff to show that the property was joint family property. **GOSAIN DOSS KOONDoo v. SIBO KOOMAREE DEBIA**.

[xii 219]

4. — [*Suit for share in family dwelling.*] A claim by a member of a joint Hindu family to a share in a family dwelling, on the allegation that the house was originally joint, fails within the provisions of s. 1, cl. 13 of Act XIV of 1859. **DENONATH SHAW v. HURBYNARAIN SHAW** — — — — — xii 349

—, s. 1, cl. 15.

See s. 1, CL. 16.

2. — [*Deposit—Demand—Cause of action.*] The plaintiff, on leaving Calcutta in 1850, deposited a sum of money with A., B., and C., on which they were to pay him Rs. 9 monthly, and return the principal on his demanding it. Rs. 9 were paid to him monthly until within twelve months of this suit. A. and B. had died since the date of the deposit. This suit was brought against C. and the representatives of A. and B. to recover the amount deposited, and a decree was passed against C. on his own admission. But the representatives of A. and B. set up that the suit was barred. *Held*, that it was not a deposit under s. 1, cl. 15 of Act XIV of 1859. But *held* also, in accordance with the English cases (from which, however, the learned Judge dissented) that the cause of action arose from the date of the agreement to repay the money on demand, and not from the date of the demand, and therefore the suit was barred. **PARBATI CHARAN MOOKEEJEA v. RAMNARAYAN MATILAL** — — — — — v 396
But see **BRAMMAMAYI DAS v. ABHAI CHARAN CHOWDHRY** — — — — — vii 489

3. — [*Suit by mortgagee for possession of mortgaged property.*] In a suit by a mortgagee after a mortgage has been satisfied, for the recovery of the mortgaged property, the period of limitation applicable is that prescribed by cl. 15 of s. 1 of Act XIV of 1859. **LALL DOSS v. JAMAL ALI** — — — Sup. Vol. 901

4. — [*Acknowledgment of title by mooktear—Usufructuary mortgage.*] Where sixty years have elapsed from the date of a usufructuary mortgage, a suit by the mortgagee to recover possession of the mortgaged property is barred by cl. 15, s. 1, Act XIV of 1859. Where a mortgagee signed a mooktearnama, in which he stated that he would abide by any arguments which might be urged, and any documents which might be filed, by the mooktear thereby appointed, and the mooktear subsequently filed a written statement signed by himself alone, in which he admitted the mortgagor's title, — *held*, that the mooktearnama and written statement could not be

LIMITATION ACT XIV OF 1859, s. 1, cl. 15—contd.

read together as amounting to an acknowledgment sufficient to satisfy the requirements of cl. 15, s. 1, Act XIV of 1859. **LUCHMEE BUKSH ROY v. RUNJEET RAM PANDAY**, [xiii P. C. 177]

5. — *Laches—Estoppel.*] The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against the existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by s. 1, cl. 15, Act XIV of 1859. **JUGGERNATH SAHOO v. SHAH MAHOMED HOSSEIN** — — — — — xiv P. C. 386

—, s. 1, cl. 16.

See BENG. ACT VIII OF 1869, s. 29.

2. — *Cause of action—Balance of account.*] The representatives of a gomasta, who had, for the last four years of his life, taken the moneys of his employers in advance for the purpose of the business, were sued for the balance of account of such moneys after giving credit for the amount of the gomasta's annual salary. *Held*, that the suit being brought in less than six years from the date of the gomasta's death, was not barred by the provisions of Act XIV of 1859. **KALIKRISHNA PAUL CHOWDREY v. JAGATTARA** — ii A. C. 139

3. — *Deposit of Government revenue with Collector pending partition—Account, adjustment of.*] During the pendency of a batwarra, the plaintiff purchased a share in an ijmal mehal; and as the proportion of the Government revenue of each shareholder had not been ascertained, the shareholders, including the plaintiff's vendor, and subsequently the plaintiff, paid to the Collectorate what they thought due from them on account of Government revenue. Upon an account stated in 1867 it was ascertained that, after all necessary deductions, a sum of Rs. 655 was due to the plaintiff, who in 1864 applied to the Collector for payment of the amount; but the application was rejected, as the money had been previously drawn away by certain creditors of his vendor. In 1867 he sued the Collector for recovery of the amount. The defence set up was, that the suit was barred by lapse of time. *Held*, that the Collector was not a depositary under the meaning of cl. 15, s. 1; that the cause of action did not arise on the demand for and refusal of payment, but on adjustment of the account; and that the case came under cl. 16, s. 1. **GOBIND CHANDRA v. COLLECTOR OF DACCA** — — — — — iii Ap. 67

4. — *Suit to set aside adoption—Declaratory decrees.*] *H. N.* died on 16th May, 1854, without issue, leaving a widow *B. B.*, on 19th May, 1856, purported to adopt *S.* in accordance with an alleged anumati-patra executed by *H. N.* *R. N.*, the uncle of *H. N.*, died on 6th July, 1855, leaving a widow *M.*, in whose favour he had executed an anumati-patra, by the terms of which she was to have the management of his property during the minority of the adopted son, in whom it was

LIMITATION ACT XIV OF 1859, s. 1, cl. 16—contd.

to vest on his adoption. *M.* adopted *D.* subsequently to the adoption of *S.* After the death of *R. N.*, *B.*, as widow of *H. N.* and adoptive mother of *S.*, brought a suit against *M.* as the widow of *R. N.*, and ignoring the existence of *D.* *D.* died, and on his death *M.* adopted *N.* on 4th April, 1864. In a suit brought on 4th January, 1873, by *M.*, as the mother and guardian of *N.* to have the adoption of *S.* declared invalid,—*held*, that the limitation provided by cl. 16, s. 1, Act XIV of 1859, is applicable to a suit for a declaratory decree. The cause of action arose at the date of the adoption of *S.*, viz., the 19th May, 1856, and therefore the suit was barred. **MRIN-MOYEE DABEE v. BHOOBUNMOYEE DABEE**, [xv 1

5. — *Suit for recovery of salary—Money had and received.*] The defendant, who was a batwara ameen employed by the Collector, drew from the public treasury at Backergunge a sum of money to pay the establishment, but failed to pay the plaintiff, who was a mohurir under him. In a suit against the ameen for recovery of his salary after a lapse of three years from the time when the salary became due,—*held*, that the plaintiff's claim was for money had and received on his account, and, therefore, he might bring his suit within six years from the date of such receipt. **ABHAYA CHARN DUTT v. HARO CHANDRA DAS BANIK** — — — — — iv Ap. 68

6. — *Mortgagee in possession—Surplus collections by, Suit for.*] In a suit for surplus collections which have been received by a mortgagee in possession, the limitation prescribed by Act XIV of 1859, s. 1, cl. 16, is applicable. **LALL DOSS v. JAMAL ALI**, [Sup. Vol. 901

7. — *Cause of action—Suit for turn of worship of an idol.*] The plaintiff sued the defendants for a declaration of his right to a turn of worship of an idol for $7\frac{1}{4}$ days in each month, alleging that the defendants, who were entitled to another turn, had in 1864 taken adverse possession of the idol and properties belonging to it, and had so deprived him (the plaintiff) of his turn of worship from that time. *Held*, that the cause of action did not recur as the turn of worship came round. Such suit falls within the operation of cl. 16, s. 1, Act XIV of 1859. **GAUR MOHAN CHOWDREY v. MADAN MOHAN CHOWDREY**, [vi 353

8. — *Agreement in writing which could not be registered.*] On 9th April, 1864, the defendant, *L.*, an attorney, entered into an agreement with the plaintiff and one *P. R. D.*, by which the plaintiff engaged to employ himself as cashier and accountant of *L.*, and the plaintiff and *P. R. D.* engaged that they would, from time to time, on the requisition of *L.*, advance money to him subject to the proviso that there should be at no time a larger sum due by *L.* on account of such advances than three-fourths of the value of all bills, stocks, and other property, which *L.* would

LIMITATION ACT XIV OF 1859, s. 1, cl. 16—contd.

make over to the plaintiff and *P. R. D.*, provided also that the said advances should not exceed in total at any time Rs. 10,000. *L.* was to pay interest on such advances at nine per cent., and the plaintiff and *P. R. D.* were to have a lien for such advances on all bills, stocks, and other property of *L.*'s which the plaintiff and *P. R. D.* should have in their custody as security for such advances. *L.* was to be at liberty to realize such bills and sell such stocks as he should deem necessary, provided that the money was to be paid to the plaintiff and *P. R. D.* in payment of such advances. Should there be any surplus money remaining after the settlement of the account, such money was to be credited to the account of *L.* The agreement was made before the Registration Act of 1864 came into force, and it was admitted that it could not have been registered. In a suit against *L.* to recover money advanced by the plaintiff and *P. R. D.*,—*held*, that there was such an agreement by *L.* to repay the advances as to constitute a contract in writing signed by the party to be bound within the terms of cl. 10, s. 1, and as that clause provides no period of limitation for contracts which could not be registered, the period of limitation was six years as provided by cl. 16, s. 1, of that Act.

LESLIE v. PANCHANAN MITTER - vi 668

See PYARI CHAND MITTER v. FRAZER,

[vi Ap. 40]

9. — *Hindu widow—Suit to set aside alienation, and to restrain waste.* *K.*, a Hindu widow, assigned one moiety of her share in her husband's estate to *H. S.*, in consideration that *H. S.* should conduct and pay all costs of a suit which was then to be instituted against her husband's brothers, of whom *B. C.*, the present plaintiff, was one, to recover the share to which she was entitled, and also to pay her maintenance in the meantime. The assignment was dated 24th December, 1864. The suit was brought, and a certain sum, in Government Paper and Notes, was decreed to *K.*, on August 5th, 1868. This sum was paid into Court by *B. C.* on 10th March, 1869, and upon *K.*'s application was, on 10th March, 1871, paid out to her. *B. C.* then sued as reversionary heir to have the deed of assignment set aside, and prayed that *H. S.* should be restrained from receiving the moiety. The plaint was filed on 14th March, 1871. In it he alleged his apprehension of waste by *K.* *Held*, that a suit simply to set aside the assignment would have been barred as brought more than six years from the date of the assignment, yet so far as it was based on the allegation of apprehended waste, it was not barred by the law of limitation.

BISWANATH CHUNDER v. KHANTOMANI DAS - - - - - vii 131

10. — *Divorce Act (IV of 1869)—Suit for divorce.* Act XIV of 1859, s. 1, cl. 16, does not apply to divorce suits. *HAY v. GORDON,* [x P. C. 301]

11. — *Suit for share of money had and received.* *A., B., and C.* being joint creditors

LIMITATION ACT XIV OF 1859, s. 1, cl. 16—contd.

of *D., A. and B.* received, in 1856 a payment on account in respect of their share in the debt. *D.* having made default in payment of the balance, separate suits were brought against him by *A., B., and C.* The Court having held that the payment was a payment to all, *A. and B.* recovered more than their share, and *C.* recovered less. A family suit for partition between *A., B., and C.* was, in 1862, compromised, and it was agreed that all claims between the parties should be considered as settled; but it was agreed that if *C.* should, out of an appeal brought by him against *D.*, have any claim against *A. and B.*, that should be reserved. *C.*'s appeal was, in 1863, unsuccessful, and in 1864, he brought an action against *A. and B.* for his share of the money paid in 1856. *Held*, that he was entitled to recover the amount which *A. and B.* had recovered against *D.* in excess of their claim, and that the suit was not barred by the law of limitation. *LUTF ALI KHAN v. AFZALUNISSA BEGUM* - - - ix P. C. 348

12. — *Cause of action—Suit for contribution—Joint debts.* *N., G., and H.* were three brothers living together as a joint Hindu family. After the death of *N. and G.*, decrees were obtained against *N.*'s widow, and satisfied by her in respect of money borrowed by *N. and H.*, as the managing members of the family, and spent on family purposes while *G.*'s widow was living in the family. In a suit by *N.*'s widow for contribution against *G.*'s widow,—*held*, that the cause of action arose, not on the date of the decrees against the plaintiff, but at the time when she had to pay over their amount, and the suit was not barred. *BIMALA DEBI v. TARASUNDARI DEBI* - - - - - -vi Ap. 101

13. — The plaintiff, the manager of a joint family, of which the defendants were members, borrowed, on 6th October, 1860, Rs. 1,000, which he applied in the payment of certain joint family expenses. The creditor obtained a decree against him, which the plaintiff satisfied by obtaining a loan from another person on 6th February, 1865. The second creditor also obtained a decree, which was paid off, as the plaintiff alleged, out of his own private funds, on 5th October, 1866. In a suit against the defendants for contribution. *Held*, that the first loan was taken by the plaintiff in his private capacity, and not as manager; that the payment in respect of which contribution was sought was made in 1800, and not in 1866; and as the cause of action arose at the date the money was paid the suit was barred by limitation. *RAM KRISHNA ROY v. MADAN GOPAL ROY*, vi Ap. 103

On this clause see also *LUCKHINARAIN MITTER v. KHETTRO PAL SINGH ROY*, xiii P. C. 146

—, s. 2—*Trustee—Idol.* In a suit by the representatives of a shebait to recover possession of property of an idol from the assignees of a purchaser, on the ground that the purchaser was a mere trustee for the idol, and the defendants had notice of this or

LIMITATION ACT XIV OF 1859, s. 2—continued.

might have known it by reasonable enquiry, *held*, that the suit was not one which came within s. 2, Act XIV of 1859, as a suit brought against a trustee. *BRAJA SUNDARI DEBI v. LUCHMI KUNWARI* - - - ii A. C. 155

2. — *Trustee—Benamidar.*] A benami transaction does not create the relation of trustee and *cestui que trust*. A benamidar is not a trustee within the meaning of s. 2, Act XIV of 1859. *UMA SUNDARI DAS v. DWARKANATH ROY* - - - - - ii A. C. 284

3. — *Trustee—Mortgagee in possession.*] A mortgagee in possession after the mortgage has been satisfied is not a trustee for the mortgagor within the meaning of s. 2 of Act XIV of 1859. *LALL DOSS v. JAMAL ALI*,
[Sup. Vol. 901

4. — *Trust—Master and servant.*] A. advanced certain sums of money on different occasions to his servant B., for the purpose of erecting buildings, &c., for A. In a suit by A. for recovery of the balance, B. raised the defence that the suit was barred so far as it related to sums advanced more than three years before the suit. *Held*, that the matter was of the nature of a trust, and limitation would not apply. *NARAYAN DAS v. MAHARAJA OF BURDWAN*,
[i S. N. xi

—, s. 4—*Acknowledgment.*] The defendant sent a letter, dated 22nd December, 1865, to the plaintiffs, which contained the following postscript:—"P. S.—Enclosed a remittance of £40 to old account." *Held* (on appeal, reversing the decision of *NORMAN, J.*), the words "remittance of £40 to old account" were ambiguous, and did not necessarily import that a further sum was due, so as to constitute an acknowledgment of a debt which would give a new period of limitation. *SHEARMAN v. FLEMING* - - - - - v 619

2. — The defendant, who was the owner of a moiety of certain property (the plaintiff and another being owners of the other moiety), mortgaged his moiety to the plaintiff; the mortgage-deed, dated 11th June, 1863, contained a covenant to pay off the principal and interest at the expiration of a year, and gave a power of sale in default of payment. The whole property, including the mortgaged portion, was conveyed to one *I. D.* on 27th November, 1864, by a bill of sale executed by the three owners of the property. On the execution of the bill of sale the sum of Rs. 16,250, the half of the purchase-money which belonged to the defendant, was handed over to the plaintiff in part-payment of a sum of Rs. 19,555, which was therein recited as being then due on the mortgage. In a suit for the balance brought in November, 1869, the defence was, that it was barred by the law of limitation. *Held*, that the admission by the defendant contained in the bill of sale of November, 1864, was a sufficient acknowledgment to take it out of the operation of Act XIV of 1859, s. 4. *MADHUSUDAN CHOWDRY v. BRAJANATH CHANDRA* - - - - - vi 299

LIMITATION ACT XIV OF 1859, s. 4—continued.

3. — An acknowledgment not coming directly from the debtor himself, but merely deduced as an inference from the tenor of a series of letters, is not a sufficient acknowledgment to satisfy s. 4. To satisfy that section, there must be some principal writing of a particular date, which can be relied on by itself, when properly construed, as constituting an acknowledgment of the debt. *ROGERS v. MONTRIOU* - - - - - vi 550

4. — In a suit for the price of goods, the period of limitation had expired, but the Court *held* that certain letters written by the defendant to the plaintiffs, though they contained no mention of the sum due, nor any promise to pay, were a sufficient acknowledgment of the debt under s. 4, Act XIV of 1859. *HARRISON v. HOPE* - - - - - ix Ap. 43

5. — A suit was brought on a promissory note, by which the defendant promised to pay to the plaintiff Rs. 1,000 with interest at the rate of 12 per cent. per annum. The defendant afterwards wrote the following letter to the plaintiff: "I further hold myself responsible to you for the two sums of Rs. 1,000 and Rs. 900 respectively, the latter sum bearing interest at 24 per cent. per annum. Both these sums of Rs. 1,000 and Rs. 900 I engage to pay you." *Held*, that the letter was an acknowledgment within s. 4, Act XIV of 1859. *UMESH CHUNDER MOOKERJEE v. SAGEMAN v 633 note*
See GUPTIKISHEN GOSWAMI v. BRINDABUN CHANDRA SIEKAR CHOWDHRY - - - P. C. 37

—, s. 5—*Mortgage by member of joint Hindu family—Bonâ fide purchaser.*] To entitle a purchaser to claim the benefit of Act XIV of 1859, s. 5, he must prove,—1st, that he is a purchaser of what is represented to him, and what he fully believes, to be not a mortgage but an absolute title; 2nd, that he purchased *bonâ fide*,—that is to say, without a knowledge of the title having been originally a mortgage, and of a doubt existing as to the mortgage having ceased; and 3rd, that he is a purchaser for valuable consideration. Where an estate having been originally mortgaged by *K.*, a member of a joint Hindu family, he subsequently, without the knowledge of the other members, released the equity of redemption to *R.*, who afterwards sold to *H.*, the owner of a factory, who afterwards sold to *G. & Co.*, the factory with the lands appertaining thereto, amongst which was the property so released, and proceedings had for many years been taken by the other members to assert their rights,—*held*, reversing the decision of the High Court, that *G. & Co.* were not purchasers entitled to the protection of Act XIV of 1859, s. 5. *Held* also, that s. 10 does not apply in such a case, although *K.* acted fraudulently. *RADANATH DAS v. ELLIOTT* - - - - - vi P. C. 530

2. — *Bonâ fide purchaser.*] A defendant who seeks to protect himself by the provisions of s. 5, Act XIV of 1859, against the claim of a mortgagor suing within sixty years to recover

LIMITATION ACT XIV OF 1859, s. 5—continued.

mortgaged lands, must show clearly that he, or the person from whom he derives his title, was a *bond fide* purchaser. JUGGURNATH SAHOO v. SHAH MAHOMED HOSSEIN,

[xiv P. C. 886

3. — *Bonâ fide purchaser — Property belonging to idol.*] In 1799 an estate was purchased in the name of an idol, and immediately afterwards was mortgaged. Subsequently, when the mortgage-debt had been paid off, it was reconveyed to the idol. After this the names of the idol and of its shebat were entered in the Collector's books as owners of the estate. In 1812, the purchaser again mortgaged the property, and in 1816 his widow executed a second mortgage of it to pay off the mortgage of 1812. In 1820 this second mortgage was purchased. The defendant held the property under titles derived from the mortgage of 1816. The shebat's representatives in 1867 sued to recover possession of the property as belonging to the idol, alleging that the purchaser was a mere trustee for the idol; that the present holders of the property were cognizant of this, or might have learnt it by reasonable enquiry, and therefore took the property subject to the trust; that, accordingly, the suit now brought was a suit against a trustee within s. 2, Act XIV of 1859, and could not be barred by any length of time. There was no evidence of a formal dedication of the property to the idol. *Held*, that the defendant claimed under purchasers who had purchased *bonâ fide* and for valuable consideration within s. 5, and that therefore the period of limitation was twelve years from the date of purchase, and the suit was barred. **BRAJA SUNDARI DEBI v. LACHMI KUNWARI** - - - - - ii A. C. 155

S. C. on appeal to P. C. - xv P. C. 176 note

—, s. 8 — *Mutual dealings — Year — Balance of account.*] The defendant, in 1865 and 1866, indented on the plaintiffs for large quantities of merchandize, which were shipped to Calcutta from time to time by the plaintiffs' agents in London, who drew bills on the defendant for each shipment, forwarding such bills and the shipping documents to the plaintiffs in Calcutta. The bills were presented to the defendant by the plaintiffs and accepted by him. In the course of the transactions several of the acceptances were dishonored by the defendant, and the plaintiffs, at his request, allowed him to renews the bills. Some renewals took place in August and September, 1866. In March, May, and July, 1866, the defendant made purchases from the plaintiffs, and the plaintiffs made purchases from the defendant. The plaintiffs were in the habit of closing their accounts on 30th June in each year. In an action for balance of account brought on 24th February, 1870, *held*, that the parties were merchants and traders having mutual dealings under s. 8 of Act XIV of 1859. The year mentioned in s. 8 of Act XIV of 1859 is intended to be reckoned from the time when the

LIMITATION ACT XIV OF 1859, s. 8—continued.

balance of accounts is struck. In this case that was the 30th June, 1867; the suit therefore was not barred. *Quære*.—What would be the operation of the section in those cases in which the merchant or trader balances his accounts at the lapse of a period of less than one year? **SBINATH DAS v. PARK PITTAR,**

—, s. 10—*Fraud*.] *A.* sold a decree obtained by him under Reg. VII of 1799 to *B.*, but after the sale realized the decree from the judgment-debtor. On application by *B.* for execution, on 2nd January, 1862, the fraud was discovered, and *B.* was referred by the Collector to the Civil Court. On 2nd October, 1866, *B.* brought his suit for recovery of the purchase-money from *A.* Held, that the period of limitation ran from the discovery of the fraud. The suit was not barred. GOPAL CHANDRA DEY *v.* PEMU BIBI — i A. C. 77
See RADHANATH DAS *v.* ELLIOTT,

See RADHANATH DAS v. ELLIOTT,
[vi P. C. 530]

—, s. 11.

See LIMITATION ACT IX OF 1871, s. 7.

2. — Disability of heir—Cause of action.] Under s. 11, Act XIV of 1859, the subsequent disability of an heir will not save a suit instituted after a lapse of twelve years from the date of cause of action, when such cause of action arose during the lifetime of the ancestor. MOHABAT ALI v. ALI MAHMED KULAL - - - - - iii Ap. 80

3. — *T., R., and N.*, three of the heirs of one *H.*, sued the defendant in 1865 for possession of certain property left by *H.* The defence was, that the defendant had purchased the property from *H.* in 1851, and had ever since been in possession. The lower Court found that the suit was barred as regards some of the plaintiffs, but that the other two plaintiffs, *R.* and *N.*, had not, at the time the suit was brought, exceeded their majority by three years, the time allowed them by s. 11, Act XIV of 1859. Held that, whether limitation would bar *R.* and *N.* depended not on the question whether three years from their majority had elapsed or not before the institution of the suit, but whether twelve years having elapsed from the cause of action in 1857 limitation operated as a bar. If *H.* had, at the time of his death, been out of possession for twelve years, then *R.* and *N.* would not be entitled to the extra three years after attaining their majority: but if he had died within twelve years, then the limitation should be calculated from the date of the cause of action to the date of his death, and then three years be allowed to *R.* and *N.* after they came of age. **NUR MOHAMMED v. THAKOOR BIBI,**

4. — A. sued to set aside a deed of sale of certain immoveable property, which she claimed as the property of her husband. The deed of sale had been executed by her husband's mother during her husband's minority. Her husband attained his majority more

LIMITATION ACT XIV OF 1859, s. 11—continued.

than twelve years after the deed of sale, and died about a year afterwards, leaving her, A., a minor. A. alleged that she had attained her majority within three years of this suit. *Held*, the suit was barred under s. 11, Act XIV of 1859. The husband could have sued after attaining his majority, and the subsequent disqualification of the plaintiff A. could not extend the time. **ABHAYA DUEGA v. HARI KRISHNA GOPE** - - - - - i S. N. xxi

—, s. 13—*Absence by reason of transportation.*] During the plaintiff's absence by reason of transportation, the defendant took possession of land which previously belonged to him as a tenant, and the landlord allowed the defendant to hold as his tenant. He held possession for more than twelve years. In a suit by the plaintiff on his return to turn the defendant out of possession, in which the landlord was made a defendant, *held*, that the suit was barred, there being no exception in the Limitation Act with regard to plaintiffs who are beyond the sea in consequence of transportation. **DOMUN v. SUDUNKOOLAH**,

[i S. N. xxv

—, s. 14—*Suit against the representatives of deceased person.*] Where the defendant in a suit died before the plaint against him was filed, and the suit was some time after carried on against his representatives, the time during which the suit was being prosecuted *bonâ fide* against the dead man may be deducted in calculating the period of limitation against his representatives. **MOHAN CHAND KANDU v. AZIM KAZI CHOWKIDAR**,

[iii A. C. 233

2. — *Deduction of time occupied by former suit under old law of limitation.*] The plaintiff instituted a suit under the old Law (Reg. III of 1793), and was nonsuited on appeal, because the plaint was defective in not stating the boundaries of the land claimed. While the appeal was pending, Act XIV of 1859 came into operation. He instituted a fresh suit, and claimed to deduct the time occupied in prosecuting the former suit and appeal under the provisions of Act XIV of 1859, s. 14. *Held* (by the majority of the Court), that the plaintiff was nonsuited owing to his negligence, and the time sought to be deducted from the period of limitation could not be allowed. *Per* LOCH and PUNDIT, JJ.—Under the circumstances the time should be deducted in computing the period of limitation. **CHUNDER MADHUB CHUCKERBUTTY v. RAM COOMAR CHOWDHRY** - Sup. Vol. 553

3. — *Deduction of time suit is being prosecuted in Court without jurisdiction.*] Under a decree made in a suit brought by A. against B., A. obtained possession of certain property. The decree was reversed on appeal, but no order was made by the Appellate Court with regard to mesne profits. After such reversal, B. applied to and obtained an order from the Court of first instance for possession and mesne profits. This order, so far as it

LIMITATION ACT XIV OF 1859, s. 14—continued.

awarded mesne profits, was set aside by the High Court as being an order he had no power to make, no right to mesne profits having been declared by the Appellate Court, and as being made "altogether without jurisdiction;" they held that B. should have applied to the Appellate Court which reversed the decree, or should have brought a separate suit for the mesne profits. An application for review of this judgment being rejected, B. instituted a suit for such mesne profits. *Held per* PEACOCK, C. J., KEMP and MACPHERSON, JJ. (LOCH, J., dissenting), that in the proceedings taken by B. in the former suit to obtain the mesne profits she was engaged in prosecuting a suit upon the same cause of action against the same defendant within the meaning of s. 14, Act XIV of 1859. *Held per* KEMP, MACPHERSON, and LOCH, JJ. (PEACOCK, C. J., dissenting), that the order of the Court of first instance awarding mesne profits was not annulled from "defect of jurisdiction or for any such cause" within the meaning of s. 14, Act XIV of 1859; and, consequently, that the period occupied in obtaining and seeking to uphold such order could not be deducted in computing the period of limitation for the suit subsequently brought by B. for the mesne profits. **HURRO CHUNDER ROY CHOWDHRY v. SOORADHONEE DEBIA**,

[Sup. Vol. 935

4. — Where A. brought a suit in the Munsif's Court, and it was found that the suit had been improperly valued, and that the Munsif had no jurisdiction to try it, and the Munsif returned the plaint in order that the suit might be brought in the proper Court, *held*, that A. was entitled to deduct from the period of limitation the time during which he had prosecuted his suit in the Munsif's Court, and under s. 14, Act XIV of 1859, his suit was not barred. **CHANDI DAS v. JANAKIRAM** - - - i S. N. xii

5. — The plaintiff sued under Act X of 1859 in the Revenue Court to recover her share of certain arrears of rent due from the defendants on a kabuliast executed by them in favour of the plaintiff's mother, but her suit, on the objection by the defendants that her co-sharer was not a party, was dismissed by the Collector, and his decision was upheld by the High Court on appeal on 3rd July, 1861. The plaintiff then brought a fresh suit under Act X of 1859, making her co-sharer a party defendant, but the suit was again dismissed, and the dismissal upheld by the High Court on 14th April, 1870, on the ground that the plaintiff's share was not her own, and therefore the Collector's Court had no jurisdiction to determine any question of right as between her and her co-sharer. In a suit brought in the Civil Court on 31st May, 1870, for a moiety of the rents from 1864 to 1869, *held*, it was not a suit for an arrear of rent as that term is defined in s. 21, Beng. Act VIII of 1869, and s. 29 of that Act would not apply. The limitation applicable was that provided by Act XIV of 1859, under s. 14 of which Act the plaintiff was entitled to deduct the time during which she

LIMITATION ACT XIV OF 1859, s. 14—continued.

was *bonâ fide* prosecuting her claim in the Revenue Courts. **HARIS CHANDRA DUTT v. JAGADAMBA DAS** - - - viii 190 note

6. — *L. and R.*, the holders of a *patni* estate, granted in 1856 a *darpatni* lease to *S.* at an annual rent, the lease stipulating that *S.* should have full power of sale and gift, but should not sublet without the *patnidar's* consent. The lease contained no stipulation for the registration of any vendee or donee. In 1860 *S.* sold the *darpatni* lease to *K.*, the deed of sale, which was duly registered, providing for mutation of names in the *patnidar's* books. No such mutation was ever effected by *K.*, who was never recognized as their tenant by *L.* and *R.*, the rent of the *darpatni* being paid in the name of *S.* In 1864, the rent due from the *patnidars* being in arrear, the *zemindar* proceeded to sell the *patni* under Reg. VIII of 1819. Thereupon *K.*, in order to protect his under-tenure, deposited in the Collectorate on 17th November, 1864, a sum of money, on which the sale was stayed. *K.* being then in arrear in the payment of his *darpatni* rent, claimed to set off the amount deposited in the Collectorate against the rent due to *L.* and *R.* This *L.* and *R.* refused to allow, and they brought a suit in the Collector's Court against *S.* and his sureties to recover the arrears of rent. In that suit *K.* intervened claiming the benefit of the set-off, to which, however, the High Court, on 26th June, 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by *K.* On 30th October, 1867, *K.* brought a regular suit against *S.* and *L.* and *R.* to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal, and the suit dismissed for want of jurisdiction. On 6th June, 1869, *K.* filed his plaint in the proper Court. *Held*, that whether the period of three years under s. 1, cl. 9 of Act XIV of 1859, or of six years as provided by cl. 16, s. 1 of that Act, be the limitation applicable to such a suit, the suit was not barred, inasmuch as *K.* was entitled to deduct the time during which he was *bonâ fide* prosecuting with due diligence a suit for the same purpose in a Court not having jurisdiction. **LUCKHINARAIN MITTAR v. KETTERO PAL SINGH ROY** xiii P. C. 146

7. — A suit for arrears of rent was brought by the plaintiff in the Revenue Court, but it was held that there being no actual contract between the plaintiff and defendant, and the defendant's liability arising out of equitable considerations with which the Collector's Court could not deal, that Court had no jurisdiction to decide it. In a subsequent suit in the Civil Court *held*, the plaintiff was, under s. 14, Act XIV of 1859, entitled to a deduction of the time he was prosecuting his claim in the Revenue Court. **PROSONOOCOMAR PAL CHOWDHRY v. MUDDUN MOHUN PAL CHOWDHRY**, [xi Ap. 31 note

8. — Where a part-proprietor of a talook, who was also co-sharer in a fractional portion thereof, brought suits in the Revenue Courts against his co-talookdars for arrears of rent

LIMITATION ACT XIV OF 1859, s. 14—continued.

without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction, *held*, in a subsequent suit in the Civil Court for the rent for the same period, that the plaintiff was entitled, under s. 14, Act XIV of 1859, to a deduction of the time during which he was prosecuting his suit in the Revenue Court. **GORINDO COOMAR CHOWDHRY v. MANSON** - - - xv 56

—, s. 15.

See CIVIL PROCEDURE CODE, s. 230.

2. — *Decree for wrongful possession — Cause of action.*] In a suit for recovery of possession of a share in a certain talook on the allegation that the plaintiff had been dispossessed under an award passed under s. 15, Act XIV of 1859, the defence set up was, that the plaintiff was not in possession of the property within twelve years of suit. *Held*, that the wrongful possession, which the plaintiff held during the few months before the award under Act XIV, was no possession which could take his case out of the Act of Limitation. The disposssession under the award did not give him a fresh cause of action. **GOLAM NABI v. BISWANATH KAR** - - - iii Ap. 85

3. — *Decree for possession — Evidence.*] A decree for possession in a suit under s. 15 of Act XIV of 1859, is *prima facie* evidence that the plaintiff in that suit is entitled to recover from the defendant therein, mesne profits for the period of dispossession. **RADHA CHARAN GHATAK v. ZAMIRUNISSA KHANUM** ii A. C. 67 —, s. 17 — *Lessee under Government.*] The mere fact that the plaintiff claims as a lessee under Government does not entitle him to the benefit of s. 17, Act XIV of 1859. **ABU MIA v. RAJU MIA** - - - i A. C. 34

—, s. 19 — *Execution of decree of High Court on appeal from mofussil.*] A decree of the High Court on appeal from the mofussil must be executed within three years under s. 20, Act XIV of 1859. Such decree is not a decree of a Court established by Royal Charter within the meaning of s. 19. **RAMCHARAN BYSAK v. LAKHIKANT BANNIK** - - - vii F. B. 704

2. — The portion of such a decree which relates to costs comes within s. 19. **TAFUZZAL HOSSEIN KHAN v. BAHADUR SINGH** vii 706 note

3. — *Alteration of decree on appeal.* — Where a decree of the lower Court is materially altered on appeal by the High Court, *e.g.*, where the amount of mesne profits allowed by the lower Court is cut down by the High Court, the decree becomes a decree of the High Court, and the period within which a proceeding must have been taken to enforce the same, so that it may not be barred by the law of limitation, is twelve years under s. 19 of Act XIV of 1859. **CHOWDHRY WAHID ALI v. MULLICK INAYET ALI** - - - vi 53

4. — *Embodiment in final decree of portion affirmed.*] Where the High Court passes a decree on appeal from a mofussil Court, the Court which has to execute the decree of the

LIMITATION ACT XIV OF 1859, s. 19—continued.

High Court is governed by the rules which govern the execution of its own decrees. The ruling in *Chowdhry Wahid Ali v. Mullick Inayet Ali*—that, whether the decree of the lower Court is reversed or modified or affirmed, the decree passed by the Appellate Court is the final decree in the suit, and as such the only decree which is capable of being enforced by execution,—not dissented from, except that it was suggested that in all cases it may be expedient expressly to embody in a decree of affirmance so much of the decree below as it is intended to affirm, and thus avoid the necessity of a reference to the superseded decree. *Quære*.—Can the ruling in *Anandamayi Dasi v. Purno Chandra Roy* be supported? *KISTOKINKER GHOSE ROY v. BURBODACAUNT SINGH ROY* - - - - - x P. C. 101

5. — *Execution of decree of Privy Council—Court established or not established by Royal Charter—Act XXV of 1852, ss. 1.* *Per PEACOCK, C. J., TREVOR and L. S. JACKSON, JJ.*—A decree of Her Majesty in Council is neither a decree of a Court established by Royal Charter within s. 19, nor a decree of a Court not established by Royal Charter within s. 20 of Act XIV of 1859. Therefore, that Act does not apply to such decrees. S. 1 of Act XXV of 1852 only prescribes the procedure for executing such decrees, and does not apply any law of limitation to them. *ANANDAMAYI DASII v. PURNO CHANDRA ROY* - - - Sup. Vol. 506

—, s. 20.

See CIVIL PROCEDURE CODE, s. 207.

PAUPER SUIT.

SPECIAL APPEAL.

2. — *Execution of decree—Bonâ fide proceedings to keep decree in force.* A decree was obtained on 16th April, 1859, and execution was applied for on 28th December, 1861, when the applicant was ordered by the Court to produce a certificate of heirship. On his failing to do so, the case was struck off. He next applied for execution on 13th August, 1864. *Held*, that the proceedings taken in 1861 were not *bonâ fide* proceedings on the part of the Court such as would keep the decree alive, and that the application was barred. *LACHMIPAT SINGH ROY v. WAHID ALI* - - - ii A. C. 194

3. — A decree was passed in 1850, and was in force in 1859, when Act XIV of that year was passed. Between August, 1860, and 25th April, 1864, nothing effective was done in furtherance of execution. Petitions for execution were filed in May, 1861, and August, 1862, and the usual orders passed on them, but they were struck off in default. On 25th April, 1864, another petition was filed, and notice was served on the debtor. *Held*, that at that time the petition for execution was barred by limitation. The decree was not kept alive by the petitions of May, 1861, and August, 1862, which were struck off in default. *SATYASARAN GHOSAL v. BHAIKAB CHANDRA BRAHMO*, [ii A. C. 196]

LIMITATION ACT XIV OF 1859, s. 20—continued.

4. — *Bond payable by instalments.* Upon an application for execution being made, the judgment-debtor executed in Court an instalment-bond, by which he bound himself to pay his debt by half-yearly instalments in the months of Magh (January and February) and Bhadra (August and September) of each year, and it was stipulated that, on failure to pay a single instalment, the whole of the bond might be realized by execution. A decision was given accordingly, and the instalment-bond was filed. The judgment-debtor did not pay the instalment due in August and September, 1864, till a few days after the expiry of that month. He did not pay the instalment of January and February, 1865, at all, but subsequent payments were made and accepted. In December, 1867, and January, 1868, the decree-holder applied to execute the decree, and realize the whole amount of the bond. The lower Appellate Court holding that time ran from the first default in August and September, 1864, dismissed the application. *Held* by the High Court on appeal, that the application was not barred by s. 20, and that the time ran from January and February, 1865. *UPENDRA MOHAN TAGORE v. TAKALIA BEPARI* - - - ii A. C. 345

5. — *Kistbandi—Extension of time for limitation by agreement of parties.* A. obtained a decree against B. on the 17th September, 1863. The decree was kept in force by sundry proceedings, the last of which was taken on the 30th December, 1864. On the 6th February, 1865, the parties filed a kistbandi, whereby they agreed that the amount due under the decree should be payable by instalments, the first instalment to fall due on 14th July, 1865; at the same time an existing attachment was given up. On 14th July, 1865, A. applied for execution of the decree in respect of six instalments due under the kistbandi. *Held* (MITTER, J., dissenting), the Court could not recognize any arrangement between the parties enlarging the period of limitation allowed by law for the execution of decrees, or which alters the terms of the decree. The filing of the kistbandi and relinquishment of the attachment were not a proceeding to enforce the decree or keep it in force. Execution of the decree was barred by limitation. *KRISHNA KAMAL SING v. HIRU SIRDAR*, [iv F. B. 101]

6. — *Execution of decree payable by instalments.* The decree provided that the amount should be paid in three instalments, and in default of payment of one instalment, the decree-holder was empowered to execute his decree for the whole amount. When the instalment for December, 1865, fell due, the judgment-debtor paid a portion; and obtained an extension of time up to December, 1866. On application on 21st September, 1869, for execution of the decree for the instalments of 1866 and 1867,—*held*, that the instalment for 1866 was not barred by lapse of time. *KRISHNA CHANDRA SHAHA v. OMED ALI*, [vi Ap. 31]

LIMITATION ACT XIV OF 1859, s. 20—continued.

7. — *Proceedings to keep decree in force.* A decree was obtained on 6th June, 1861, and in February, 1864, a pretended purchaser of it sought execution. On 15th March, 1864, the original decree-holder herself applied for execution of the same decree against certain of the judgment-debtors without mentioning the appellant, who was one of them. Subsequent proceedings at different times were taken between her and the alleged purchaser in order to ascertain which of them was really entitled to execution of the decree, and on the 6th March, 1867, her representatives got a decree setting aside the alleged purchase, and declaring that they might execute the decree of 6th June, 1861. Accordingly, on 31st August, 1868, an application was made by her representatives for that purpose. Between the 15th March, 1864, and 31st August, 1868, no proceedings had been taken in execution. *Held*, that the application was not barred by limitation; that no execution could be given till it was ascertained who were the actual decree-holders; and that the intermediate proceedings for that purpose were *bonâ fide* proceedings within s. 20 for the purpose of keeping the decree in force. *ABDUL GUNNY v. POGOSE*,
[iv A. C. 1

8. — *Confirmation of sale.* Confirmation of a sale in execution of a decree by the Court of its own motion, and drawing out the proceeds of sale by the execution-creditor, are not proceedings to enforce such decree, or to keep the same in force, within the meaning of s. 20, Act XIV of 1859. *DHIRAJ MAHTAB CHUND BAHADUR v. RAM BRAHMA MULLICK*,
[iv A. C. 116

9. — *Held*, a confirmation of a sale in execution by the Court was a proceeding under s. 20, Act XIV of 1859, and sufficient to keep a decree in force, which had been obtained by the purchaser. *CHOWDHRY SHEIKH WAHID ALI v. MULLICK ENAYET HOSSEIN ALI* - - - ii 500

10. — *Quære.*—Whether a mere confirmation of a sale is a proceeding sufficient to keep the decree in force? Where it was confirmed after objection by the judgment-debtor, and the sale proceeds received by the creditor, it was *held*, that that was a proceeding sufficient to keep the decree alive. *GUNGA BISHEN CHUND v. DHIRAJ MAHTAB CHAND BAHADUR*,
[xii 506 note

11. — *Precept to Collector under Reg. XLVIII of 1793, s. 24, cl. 2.* A precept to the Collector under cl. 2, s. 24, Reg. XLVIII of 1793, for mutation of names in the terms of a decree, is a process to enforce the decree, and cannot, under s. 20, Act XIV of 1859, be issued after a lapse of three years from the passing of the decree. *NANERBI KUNWAR v. KASTURI KUNWAR* - iv A. C. 158

12. — *Proceedings to keep decree in force—Application for execution and notice.* An application for execution was made by a mooktear, and admitted by the Judge, who ordered a notice to issue to the judgment-

LIMITATION ACT XIV OF 1859, s. 20—continued.

debtor. *Held*, that such application cannot afterwards be set aside for irregularity, and that it is sufficient to keep the decree alive. *DHANPAT SING v. LILANAND SING* ii Ap. 18

13. — *Bona fides.* An application was made on the 13th February, 1862, for execution of a decree, and was struck off on the 31st January, 1863. A fresh application was made on the 9th August, 1865, and certain property was then attached by the decree-holder. *Held*, that the Judge should have enquired whether the former applications were *bonâ fide* and sufficient to keep the decree alive, if not proceedings under the latest application would be barred by limitation. Case remanded accordingly. *GOLAM ASGAR v. LAKHIMANI DEBI*, ii Ap. 24

14. — *Payments out of Court—Bona fides.* A decree-holder having sold a portion of his debtor's property, his case in execution was struck off the file on the 27th July, 1866. On 9th September he again applied for execution, and was told to file a list of his debtor's property. This he did not do; but on 21st September he filed a petition, alleging that he had received two small sums from persons owing money to his judgment-debtor. On the 31st October the case was struck off the file. On the 21st August, 1868, he again applied for execution. The lower Court, holding that the realizations made in September, 1866, were not made through the Court, and therefore not in execution, declared further execution barred by limitation. *Held* on appeal by the High Court, that it was material to enquire whether the petition of 9th September, 1866, was *bonâ fide* presented with intention to proceed under it, and whether the moneys were really paid as alleged. *GANGA NARAYAN CHOWDHRY v. PHUL MOHAMMED SIKRAR* - - - ii Ap. 46

15. — *Application for execution—Bona fides.* A mere application for execution of decree if *bonâ fide* is a proceeding within the meaning of s. 20 of Act XIV of 1859 for the purpose of enforcing the judgment. *GAUR MOHAN BANDOPADHYA v. TARA CHAND BANDOPADHYA* - - - - - iii Ap. 17

16. — *Bona fides.* In judging of the *bona fides* of proceedings to obtain execution of a decree, the whole course of those proceedings must be regarded. The fact that unexplained delays have occurred during the proceedings in execution of the decree, or that some of the proceedings were ineffectual, is not necessarily evidence of a want of *bona fides*. *BENODERAM SEN v. BROJENDRO NARAIN ROY* - - - - - xiii P. C. 169

17. — *Bona fides.* Where the representatives of a deceased decree-holder applied for execution of his decree, and were directed to furnish proof that they were the representatives of the deceased, and did so, and then their execution case was struck off the file,—*held*, that the steps taken by them were *bonâ fide* steps taken to keep the decree alive. *ADINA BIBI v. SUBUBUNNISA BIBI* iii Ap. 142

LIMITATION ACT XIV OF 1859, s. 20—continued.

18. — *Joint decree.*] In the case of a joint decree, a *bonâ fide* proceeding by any one of the decree-holders is a sufficient proceeding to keep the decree alive within s. 20. **OUDE-BEHARI LAL v. BRAJAMOHAN LAL** iv Ap. 41

19. — *Bona fides.*] So long as an actual *bonâ fide* contest is going on in Court between a decree-holder and the judgment-debtor as to the judgment, there is a pending 'proceeding' within s. 20, and the period of limitation must be computed from the Court's decision. The decision in the case of *Ram Sahai Singh v. Sheo Sahai Singh* commented on and approved of. **DHIRAJ MAHTAB CHUND BAHADUR v. BULRAM SINGH BABOO** - v P. C. 611

20. — *Civil Procedure Code, s. 216, notice under — Bona fides.*] The service of a notice under s. 216 of Act VIII of 1859, if made *bonâ fide* with a view to take further proceedings, is sufficient to keep a decree alive. **DHIRAJ MAHTAB CHAND BAHADUR v. LAKHI BIBI** - - - - - vi Ap. 146

21. — *Civil Procedure Code, s. 216—Striking off execution case—Bona fides.*] No proceeding will be effectual to keep alive a judgment, decree or order within the meaning of s. 20, Act XIV of 1859, unless it be *bonâ fide*. The word 'proceeding' in that section includes any *bonâ fide* application, or the last act done by the party, by the Court, or by the officer of the Court in furtherance of such application; hence it includes the issue by the Court of a notice under s. 216 of the Civil Procedure Code, and the service of it by the officer of the Court: but the mere pendency of an execution case struck off the file for want of prosecution, or the striking such case off the file, is not a proceeding within the meaning of the section. **RAM SAHAI SING v. SHEO SAHAI SING**; **GURUDAS AKHULI v. GOBIN NAIK** - Sup. Vol. 492

22. — *Decree against two persons specifying period for which each was liable—Execution against one.*] Where a decree was given for arrears of rent against two persons, and one of them was afterwards declared on appeal to be liable for the rents for a certain period only, and execution was taken out against him only, *held*, that the decree must be taken as a separate decree against each defendant for the portion for which each was declared to be liable, and consequently that execution proceedings against one would not prevent the law of limitation applying to bar execution against the other. **WISE v. RAJNARAIN CHUCKERBUTTY** - - - - - x F. B. 258

KHEMA DEBEA v. KAMOLAKANT BUKSHI,
[x 259 note]

23. — *Proceeding to enforce decree — Application for review.*] An application by a decree-holder for a review of judgment is not a proceeding to enforce his decree within s. 20 of Act XIV of 1859. **LUTEFUN v. RAJROOP SING** - - - - - x 361

24. — *Proceeding to enforce decree—Bona fides.*] An execution sale was stayed by con-

LIMITATION ACT XIV OF 1859, s. 20—continued.

sent for two months, and the execution suit was struck off the file. During such period the execution creditor applied to the Court to restore his execution suit, and to pay to him certain moneys in deposit in Court to the credit of the judgment-debtor in another suit, alleging that he (the execution creditor) had attached them; but it turned out that he had attached them in another suit. *Held*, the application being *bonâ fide*, the period of limitation began to run from the date of the disposal of the application by the Court. **ROY DHUNPUT SINGH ROY v. MUDHOMOTTEE DEBIA** - - - - - xi P. C. 23

25. — *Execution of decree obtained before the passing of Act XIV of 1859—Suit by decree-holder to declare property liable to attachment.*] Process of execution of a decree obtained before the passing of Act XIV of 1859 may be issued within the time mentioned in s. 21 of that Act without any prior proceeding having been taken; but when it is sought to execute such decree after three years from the time of the passing of the Act, process of execution shall not be issued unless some proceeding within the meaning of s. 20 shall have been taken to enforce the decree or keep it in force within three years next preceding the application for execution. A regular suit by a decree-holder for a declaration that property released from attachment, under s. 246 of Act VIII of 1859, is liable to attachment in execution of his decree, is a proceeding to keep a decree in force within the meaning of s. 20, Act XIV of 1859. **KANGALEE CHURN GHOSAL v. BONOMALEE MULLICK**; **MAHABEER PERSAD v. PRANPUTTY KOER** - Sup. Vol. 709

26. — *Opposing application for leave to appeal.*] An appeal prosecuted to a decree is a proceeding to enforce a decree within the meaning of s. 20 of Act XIV of 1859. Also *held*, there was such a proceeding where, on the judgment-debtor seeking to obtain leave from the High Court to appeal to the Privy Council, the execution-creditor intervened. **KISTO KINKER GHOSE ROY v. BURRODA CAUNT SINGH ROY,**
[x P. C. 101]

27. — *Opposing application for review.*] The words 'judgment, decree or order' in s. 20, Act XIV of 1859, mean a judgment, decree or order which can be enforced by execution. If on appeal the judgment of the lower Court be affirmed, limitation runs from the date of such judgment of affirmance; but if the appeal is dismissed for default, limitation runs from the time of the original decree. An application for a review, or a petition of appeal by the person against whom the judgment was given, is not a proceeding by the decree-holder to keep the decree in force. But there is such a proceeding if he appear to oppose the application, or does any act to prevent the decree being set aside. **BIPRO DOSS GOSSAIN v. CHUNDER SIKUR BHATTACHARJEE,**
[Sup. Vol. 718]

LIMITATION ACT XIV OF 1859, s. 20—continued.

28. — *Opposing application for review or petition of appeal.*] If after a decree upon an application for review of judgment or petition of appeal, the person in whose favour the original decree was given appears in person (whether voluntarily or upon service of notice) to oppose the application, and files a vakalat-nama, or does anything for the purpose of preventing the Appellate Court or the Court of Review from setting the judgment aside, such an act being an act of the person in whose favour the judgment has been given for the purpose of preventing its being set aside, is an act done for the purpose of keeping the judgment in force. *BRUBANESWARI DEBI v. MAHENDRANATH CHOWDHRY* - - - - - iii Ap. 33

29. — The word 'proceeding' in s. 20, Act XIV of 1859, means a proceeding not barred by the law of limitation, and under which process of execution might lawfully have issued if the decree had been opposed. *BISSESSUR MULLICK v. DHIRAJ MAHATAB CHAND BAHADOOR* - - - Sup. Vol. 967

30. — *Right to enforce decree.*] In order to keep a decree alive, s. 20 of Act XIV of 1859 does not require more than that some actual proceeding should be taken, which, if successful, would result in the discharge or partial discharge of the judgment-debt. The proceeding need not be by a person legally and rightfully entitled to the decree. *NADIE HOSEIN v. PEAROO THOVILDARINEE* xiv 425 note

31. — *Decree for moveable and immoveable property—Appeal in respect of the moveable property—Application for execution as regards immoveable property.*] *S. M.*, on 24th April, 1866, obtained a decree against *B. M.*, for possession of certain land, and also for certain moveable property. *B. M.* then appealed to the High Court against the decree so far only as it related to the moveable property. *S. M.* appeared as respondent. The High Court modified the decree in respect of the moveable property only on the 6th March, 1869. On the 26th April, 1869, the decree-holder applied to the Court which gave the original decree for execution in respect of the land only. He was refused execution as barred by limitation under s. 20. *Held*, the appearance of *S. M.*, the decree-holder, as respondent in the appeal preferred by *B. M.* to the High Court (which was in respect of the moveable property only) was no proceeding to enforce the decree in respect of the land or to keep it in force. The execution of the decree in respect of the land was barred. *SRINATH MAZUMDAR v. BRAJANATH MAZUMDAR* - - - - - iv Ap. 99

—, s. 22 — *Summary decision.*] The words 'summary decision,' as used in s. 22, Act XIV of 1859, mean a decision of the Civil Court not being a decree made in a regular suit or appeal. Under s. 22, Act XIV of 1859, the period for enforcement of such decision is one year from the time it was passed. *RAMDHAN MANDAL v. RAMESWAR BHATTACHARJEE* - - - - - ii A. C. 235

LIMITATION ACT XIV OF 1859, s. 22—continued.

2. — *Order dismissing application for execution.*] An order of a Court dismissing an application for execution of a decree, on the ground that it is barred by the law of limitation, is not a 'summary decision' within the meaning of s. 22. It is an order within the meaning of s. 20 of that Act. *DHIRAJ MAHTAB CHAND BAHADOOR v. BACHARAM HAZRA* - - - - - v F. B. 168

3. — *Order for costs in execution of decree.*] An order for costs made as a contested matter in execution of a decree, is not a 'summary decision or award' within s. 22, Act XIV of 1859, but an 'order' under s. 20. *Puresh Narain Roy v. Dalrymple* (9 W. R. 458) followed. *MOHAN LALL SUKUL v. ULFUTUNNISSA* - - - - - v 164 note

LIMITATION ACT IX OF 1871, s. 7—Minor, purchaser from—Representative—Act XIV of 1859, s. 11.] Whatever may have been the effect of s. 11 of Act XIV of 1859, as to extending the privilege given to a minor to his representatives, s. 7, the corresponding section of Act IX of 1871, limits the privileges to the minor himself and his representative after his death; and therefore a purchaser from a minor cannot claim the benefit of that section. *MAHOMED AHSAD CHOWDHRY v. YAKOOB ALLY* xv 357

—, s. 7, and Sch. II, No. 129—*Cause of action—Minority.*] In a suit by the reversionary heirs of one *S.* to set aside an adoption alleged to have been made with the permission of *S.*, the plaintiffs alleged that *S.* died in 1844; that the adoption took place in 1845; and that they attained their majority respectively on the 26th September, 1871, and the 20th December, 1872. The suit was instituted on 16th June 1873. *Held*, that the adoption having taken place after the death of *S.*, the cause of action arose at the date of the adoption, as provided by No. 129, sch. ii, Act IX of 1871; and that the plaintiffs, not having been in existence when the cause of action arose, were not entitled to the benefit of s. 7, Act IX of 1871, so as to enable them to sue within three years of attaining their majority. *SIDDHESUR DUTT v. SHAM CHAND NUNDUN* - xv 9 note
See *MRINMOYEE DABEA v. BHOOBUNMOYEE DABEA* - - - - - - - - - - - xv 1

—, s. 13 — *Deduction of time necessary for obtaining copy of decree—Copy of judgment—Appeal.*] In computing the period of ninety days under s. 13 of Act IX of 1871 for filing an appeal, the appellant is, as a matter of right, entitled to deduct the number of days required for taking a copy of the decree only. The word 'decree' in that section does not include the 'judgment.' Under the circumstances, however, the Court admitted the appeal although presented after time. *HORIL PATTUCK v. BHOWANERAM* - - - xv 273 note

2. — In computing the period of limitation prescribed for an appeal by s. 13 of Act IX of 1871, the time from which the period must be taken to run is the date of the decree appealed against: and the days which, under

LIMITATION ACT IX OF 1871, s. 18—continued.

that section, may be excluded are only the days requisite for obtaining a copy of the decree. But if in any case it is impossible for the appellant to obtain a copy of the decree or to obtain a copy of the judgment in time, the Court, if satisfied that the appellant is not to blame, may consider that there is sufficient cause within the meaning of s. 5, cl. b of Act IX of 1871, and may, on application, admit the appeal after the period of limitation prescribed by the Act. **JAGARNATH SINGH v. SHEWBRATAN SINGH** - - - xv F. B. 272

—, s. 27.

See PRESCRIPTION.

—, Sch. II, No. 129.

See s. 7.

—, Sch. II, No. 167—*Application for execution of decrees.*] Application for execution of a decree passed on 13th May, 1869, and for which the period of limitation was three years, was made on 13th May, 1872. *Held*, the execution was barred by No. 167, sch. ii of Act IX of 1871, notwithstanding the suit had been instituted before 13th April, 1873. **NUNDO COOMAR MOOKERJEE v. ISSUR CHUNDER BHUTTACHARJEE** - - - xii Ap. 9

2. — *Bona fides.*] A decree-holder applying for the execution of his decree is entitled, under the provisions of Act IX of 1871, to have such execution, upon his showing that his application is made within three years from the date of a previous application to the Court to enforce the same decree, or from the date of issuing notice under s. 216 of the Code of Civil Procedure in the same matter. **ESHAN CHUNDER BOSE v. PRANNATH NAG** - - - xiv F. B. 148

3. — Under Act IX of 1871, sch. ii, No. 167, a decree-holder is entitled to have execution of his decree within three years of a notice under s. 216, Act VIII of 1859, or of a previous application for execution, without any reference to the question of *bona fides*. **BOHINI NUNDUN MITTER v. BHOGOBAN CHUNDER ROY** - - - xiv 144 note

LIMITATION OF TIME FOR PROSECUTION.

See WAGING WAR AGAINST THE QUEEN.

LIMITATION, QUESTION OF.

See APPELLATE COURT, JURISDICTION OF.

LIQUIDATED DAMAGES,

See INTEREST.

LIQUIDATORS, POWER OF, TO COMPROMISE UNDER SANCTION OF COURT.

See COMPANY.

LIS PENDENS—*Sale in execution of decree—Purchaser.*] The purchase of property in the *mofussil* at a sale in execution of decree is valid, notwithstanding a decree for sale of the property in a suit for foreclosure pending in the High Court at the time of sale, to which the purchaser was not a party. **ANANDAMAYI DAS v. DHARENDRA CHANDRA MOOKERJEE**, [viii F. C. 122

LIS PENDENS—continued.

4. — *Suit for partition.*] Three brothers, **M. L. B., P. K. B., and G. D. B.**, being jointly entitled in equal shares to an undivided one-third share in certain property, mortgaged their shares by three deeds bearing different dates to one **R. N.** Between the dates of the two last mortgages the brothers instituted a suit for partition of the property, and for certain other objects; and on the 2nd February, 1864, a decree was made in the suit, declaring the brothers entitled to a one-third share of the property, and ordering a partition and the taking of accounts, and reserving the question of costs. **R. N.** was not made a party to this suit. On 6th September, 1864, the brothers covenanted to mortgage certain property to the plaintiff, including that previously mortgaged to **R. N.** On 8th and 9th December the agreement was performed by conveyances, in which **R. N.** joined, and which recited that he had been paid off; and on 28th November, 1866, and 27th March, 1867, the three brothers conveyed their equities of redemption to the plaintiff. On 15th June, 1868, an order was made in the partition suit for the sale of a sufficient portion of the property to pay the costs of the parties to the suit, and under this order the property which the plaintiff sought to recover in the present suit was sold on 1st May, 1869, and purchased by the defendant, who at the time had full notice of the plaintiff's claim. *Held*, the doctrine of *lis pendens* did not apply, and the plaintiff was entitled to recover possession. **KAILAS CHANDRA GHOSE v. FULCHAND JAHURRI** - - - viii 474

LOAN ON SECURITY OF LAND.

See BANK OF BENGAL.

LOCAL INVESTIGATION.

See AMEEN.

CHUR LANDS.

LOCAL INVESTIGATION, OMISSION TO DIRECT.

See SPECIAL APPEAL.

LODGINGS LET TO PROSTITUTE, SUIT FOR RENT OF.

See LANDLORD AND TENANT.

LORD'S DAY ACT—*British Burmah—Abkari rules.*] The Lord's Day Act (29 Car. II, c. 7) does not extend to criminal cases in British Burmah. **A.** was convicted and fined for the breach of an Abkari rule. *Held*, that the conviction could not be supported on the ground that the Abkari rule had not the force of law. **ABRAHAM v. QUEEN** i A. Cr. 17

LOST GRANT, PRESUMPTION OF.

See PRESCRIPTION.

LOTTERY ACT (V OF 1844).

See PROMISSORY NOTE.

LOTTERY OFFICE, CHARGE OF KEEPING.

See ACT XXVII OF 1870.

LUNACY.

See EVIDENCE.

HINDU LAW, INHERITANCE, EXCLUSION FROM.

MAHOMEDAN LAW, INHERITANCE. MURDER.

LUNATIC — *Act XXXV of 1858, s. 2—Jurisdiction.*] A lunatic had been for a number of years in involuntary confinement in Bhowani-pore Lunatic Asylum, within the jurisdiction of the Court of the Judge of the 24-Pergannas, and was possessed of property out of that jurisdiction. On an application to the Judge to appoint a manager of his property—*held* that, as the lunatic was residing within the jurisdiction of the Court of the 24-Pergannas, the Judge could, under Act XXXV of 1858, s. 2, enquire into the fact of his insanity, and order a manager to be appointed to the estate. **DURANT v. CHANDRANATH CHATTERJEE** — — — ii A. C. 246

2. — *Appointment of guardian.*] On an application for the appointment of a guardian to the estate of a lunatic under Act XXXV of 1858, the Judge should only appoint a person to take charge of the estate of the lunatic, without specifying of what that estate consists. **NITAMBINI CHOWDRAIN v. SHASHI MUKHI CHOWDRAIN** — — — iv Ap. 24

3. — *Enquiry as to fact of lunacy—Power of judicial officer—Evidence.*] On an enquiry as to the fact of lunacy under Act XXXV of 1858, any finding as to the actual time when the lunacy began is beyond the jurisdiction of the judicial officer making the enquiry. Where the fact of lunacy was admitted, and the question was the date at which it commenced, the evidence of a planter in the neighbourhood, as to common report for years in the village as to the lunacy, having been admitted by the Lower Court, the Judicial Committee refused to reject it. **BODH-NARAYAN SINGH v. UMRAO SINGH; AJODHYA PRASAD SINGH v. UMRAO SINGH** — — — vi P. C. 509

4. — *Beng. Act IV of 1870—Sanction to proceedings—Court of Wards.*] The sanction of the Commissioner of the Division is necessary under Beng. Act IV of 1870 before proceedings can be taken under Act XXXV of 1858 to place the estate of a lunatic under the management of the Court of Wards. The proceedings set aside as null and void. **IN RE KOWLBAS KOER** — — — — — viii Ap. 60

5. — *Guardian—Mortgage by de facto guardian.*] A Hindu, who is lunatic, may be possessed of property, although he cannot take it by inheritance. All dealings with such property to be binding must be effected by a guardian or manager duly appointed by the supreme civil authority; and since the passing of Act XXXV of 1858, a guardian or manager can only be appointed in the special manner prescribed by that Act, *a de facto manager* can have no greater powers than one duly appointed. Where, therefore, the mother of a lunatic, who had not been so appointed, mortgaged his estate without the previous sanction of the Court, the mortgagee's suit for foreclosure was dismissed. **COURT OF WARDS v. KUPULMUN SING** — — — x 384

LUNATIC, ESTATE OF.

See SUIT ON BEHALF OF DECEASED LUNATIC'S ESTATE.

MADRAS REGULATIONS XXV AND XXXI OF 1802—Rights of zemindars under—Proprietary possession—Construction of Statute—Preamble.] The affirmative words of Madras Reg. XXV of 1802, s. 2, the preamble thereto forming no part of the enactment, did not either give to or take away from the former owners of lands not permanently assessed any rights which they then had. It merely vested in all zemindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment with them. The words "proprietary of lands" as used both in the Bengal Code of 1793, and in the Madras Code of 1802, have a technical signification. They refer to "zemindars, independent talookdars, and others, who pay the revenue assessed upon their estates immediately to Government." So also the words "proprietary possession," in the recital of Reg. XXV of 1802, means the possession of a person who is a proprietor according to the technical meaning of the term. According to the true construction of Madras Regs. XXV and XXXI of 1802, the legislature recognizes the right of private property, and does not assert a right on the part of Government to deprive or dispossess zemindars in their lifetime, or their heirs after their deaths, independently of any considerations connected with the realization of the public revenue. It provides for the protection of the revenue from invalid lakhiraj grants, and for the mode of trying the validity of the titles of persons claiming to hold their lands exempt from the payment of revenue. **OOLAGAPPA CHETTY v. ARBUTHNOT; COLLECTOR OF TRICHINOPOLY v. LEKHAMANI; PEDDA AMANI v. ZEMINDAR OF MARUNGAPPORE** — — — xiv P. C. 115

MAGISTRATE, ATTESTATION OF.

See EXAMINATION OF ACCUSED PERSON.

MAGISTRATE, CONDUCT OF.] The necessity of a Magistrate acting in a dispassionate and impartial manner, and not in the spirit of a prosecutor, observed upon. **IN THE MATTER OF MAHESH CHANDRA BANERJEE; QUEEN v. PURNA CHANDRA BANERJEE; QUEEN v. KALI SIKKAR** — — — — — iv Ap. 1

MAGISTRATE, ILLEGAL PROCEDURE BY.

See TRANSFER OF CASE TO SPECIALLY APPOINTED OFFICER FOR TRIAL.

MAGISTRATE, JURISDICTION OF.

See PENAL CODE, s. 457.

POSSESSION, ORDER OF CRIMINAL COURT AS TO. PROSTITUTES.

2. — *Default in appearance of party bailed.*] In consequence of the default in appearance of a person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. The Deputy Magistrate applied for and received the permission of the District Magistrate to try the accused under s. 174 of the Penal Code. *Held*, that the Deputy Magistrate had no jurisdiction to try the case, it not having been referred to him "either on complaint preferred directly to the

MAGISTRATE, JURISDICTION OF—continued.

Magistrate or on the report of a police officer." *QUEEN v. TAJUMADDI LAHORY* - - i A. Cr. 1

MAGISTRATE, LIABILITY OF.

See ACT XVIII OF 1860.

MAGISTRATE, ORDER OF.

See NUISANCES.

POSSESSION, ORDER OF CRIMINAL COURT AS TO.

MAGISTRATE, POWERS OF.

See COMPLAINT.

CONTEMPT OF COURT.

NUISANCES.

POLICE ENQUIRY.

RECOGNIZANCE TO KEEP THE PEACE.

3. — *Criminal Procedure Code (Act XXV of 1861), s. 273—Grievous hurt.*] A Magistrate has no power, under s. 273 of the Code of Criminal Procedure, to refer a case of grievous hurt for trial to a Deputy Magistrate having only the power of a subordinate Magistrate of the second class. *GABIND CHANDRA BISWAS v. HEM CHANDRA BARDER* - vi Ap. 115

3. — *Criminal Procedure Code (Act VIII of 1869), s. 435—Case dismissed without sufficient enquiry.*] *Semble.*—When a charge is dismissed by a subordinate Magistrate without enquiry, a Magistrate has no power, under s. 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Session. *QUEEN v. HIRALAL SING* - - - - v Ap. 48

4. — *Criminal Procedure Code (Act XXV of 1861), s. 66—Act VIII of 1869, s. 36—Removal of case from file of Deputy Magistrate.*] Interference by the High Court in a case where the Magistrate had improperly exercised his discretion in removing a case from the file of a Deputy Magistrate. IN THE MATTER OF THE PETITION OF NABA KUMAR BANERJEE - - - - v Ap. 45

5. — A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held*, that the Magistrate, having once sent the case to the Deputy Magistrate for trial, had no power to try the case himself without formally recording a proceeding under s. 36 of Act VIII of 1869. *QUEEN v. GIRISH CHANDRA GHOSE* - vii 513

6. — *Act XXV of 1861, ss. 68 and 225—Discharge of accused—Institution of fresh proceedings.*] Where an accused person is discharged by a Deputy Magistrate under s. 225 of the Code of Criminal Procedure, after a preliminary enquiry, the Magistrate of the district may proceed against him afresh under s. 68 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF RAMJAI MAZUMDAR - - - - vi Ap. 67

MAGISTRATE, POWERS OF—continued.

7. — *Act XXV of 1861, s. 171—False evidence—Preliminary enquiry.*] A Munsiff sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving false evidence, under s. 193 of the Penal Code. The Magistrate, without completing the investigation, sent the case back to the Munsiff, who finally committed the prisoner. *Held* that, while the Munsiff could have committed the prisoner himself under s. 173 of the Criminal Procedure Code, without sending him before the Magistrate to conduct the preliminary investigation on a charge of giving false evidence, the Magistrate had acted irregularly in not himself completing the enquiry. Case remanded to the Magistrate accordingly. *QUEEN v. JAN MAHOMED* - iii A. Cr. 47

MAGISTRATE, TRIAL BY, OF CASE INSTITUTED BY HIM AS SUB-REGISTRAR.

See REGISTRATION ACT XX OF 1866, ss. 93, 94.

MAHOMEDAN LAW, ACKNOWLEDGMENT—Son.]

An acknowledgment by a Mahomedan that a certain person is his son is not *prima facie* evidence of the fact which may be rebutted, but establishes the fact acknowledged. Such acknowledgment is valid when the ages of the parties admit of the relationship between them, and where the descent of the party acknowledged has not been already established from another. IN THE MATTER OF THE PETITION OF NAJIBUNNISSA - - - - iv A. C. 55

2. — Brotherhood—Nasab—Illegitimacy.]

A man cannot acknowledge a brother so as to establish the *nasab*. *SHAHREZADI BEGUM v. HIMMUT BAHADUR* - - - - iv A. C. 103

3. — The plaintiffs, *E.* and *M.*, were the illegitimate sons and daughter of *B.*, a Mahomedan woman. *E.* died, and after his death, the plaintiff sued his widow and *M.*, to recover his share of the property of *B.*, which he claimed as co-heir of *E.* He relied upon a recital in a petition in which *E.*, the plaintiff, and *M.*, describing themselves as the sons and daughter of *B.* had prayed for a certificate under Act XXVII of 1860. *Held*, that this was not such an acknowledgment of the plaintiff by *E.* as to constitute between them the status of full brotherhood and heirship by Mahomedan law. *Semble.*—The acknowledgment by one man of another as his brother is not by Mahomedan law valid, so as to be obligatory on the other heirs, but is binding against the acknowledger. *HIMMUT BAHADUR v. SHAHREZADI BEGUM*. [xiii P. C. 182]

MAHOMEDAN LAW, BILL OF EXCHANGE—Notice of dishonor.]

Notice of dishonor of a bill of exchange is not necessary by Mahomedan law. *GAPINATH v. ABBAS HOSSEIN* - vii 434 note

MAHOMEDAN LAW, CUSTODY OF WIFE.

See HABEAS CORPUS.

2. — *Rights of mother and husband.*] By Mahomedan law the mother is entitled to the custody of a female child, although married, until she has attained puberty. Where a hus-

MAHOMEDAN LAW, CUSTODY OF WIFE—contd.

band applied that his wife, stated in the return to a writ of *habeas corpus* to be "an infant under the age of sixteen years, to wit of the age of eleven years or thereabouts," might be delivered over into his custody, the Court, on the ground that she had not attained the age of puberty, and that her dower had not been paid, refused to order her to be taken from the custody of the mother, although the mother had taken her away secretly, in the absence of her father and husband from Bandari, where they were all living together, to Calcutta. **IN THE MATTER OF KHATJA BIBI** - v 557

See IN THE MATTER OF MAHIN BIBI,

[xiii 160

MAHOMEDAN LAW, DEBTS—Executor—Purchaser from heir.] A., a Mahomedan, died, being indebted to B. in a sum of money. B. sued the heirs of A. for the amount, and obtained a decree. Before B. obtained his decree the heirs of A. had mortgaged the estate of A. to C. The property was put up to sale in execution of B.'s decree, and B. became the purchaser, and now sued to obtain possession from C. *Held*, that the mere fact of the property having once belonged to the estate of A. did not entitle B. to follow it in the hands of C., so as to enable him to recover possession without redeeming. The heir of a Mahomedan may, as executor, sell a portion of the estate of the deceased if necessary for the payment of debts; and such sale will not be set aside if the purchaser acted *bonâ fide*. **ENAYET HOSSEIN v. RAMZAN ALI**, [i A. C. 172

MAHOMEDAN LAW, DIVORCE.] According to Mahomedan law, the divorce of one acting upon compulsion from threats is effective. **IBRAHIM MULLA v. ENAYETUR RUHMAN**, [iv A. C. 13

2. — *Suit by wife for divorce—Agreement for divorce.*] A husband entered into a private agreement with his wife, authorizing her to divorce him upon his marrying a second wife during her life, and without her consent. *Held*, that the Mahomedan law sanctioned such an agreement, and that the wife, on proof of her husband having married a second time without her consent, was entitled to a divorce. **BADARANISSA BIBEE v. MAFIATTALA** vii 442

MAHOMEDAN LAW, DOWER—Inheritance.] Among Mahomedans deferred dower becomes payable on the dissolution of the marriage, whether by divorce or by the death of either of the parties. According to Mahomedan law, where the heirs of a woman claimed dower from her husband, which was *nowajal*, or deferred, and not due or payable till her death, their claim was a simple money claim founded solely on the contract made by the husband. The husband is not a trustee for the wife in respect of her dower, nor has the wife a lien on her husband's property. *Quære* as to the nature of the wife's claim for dower against the heirs of her husband. **MAHAR ALI v. AMANI**, [ii A. C. 306

MEHRAN v. KUBIRAM - - - vi 60 note

MAHOMEDAN LAW, DOWER—continued.

2. — *Lien for dower.*] The heir of a deceased Mahomedan having dispossessed the widow of deceased, who was in possession in lieu of dower, takes the estate subject to her lien for the amount of her dower. **UMED ALI v. SAFFIHAN** - - - - iii A. C. 175

3. — *Prompt and deferred dower.*] A Mussalman, on his marriage, entered into a written agreement (unregistered) with his wife to pay her a lakh of rupees, one-fourth as prompt (*moodijjal*) dower, the remainder as deferred (*nowajal*) dower. A separation occurred between the husband and wife, but there was no divorce. During the separation on 3rd May, 1861, the wife petitioned for leave to sue as a pauper to recover the balance of her prompt dower. The husband, on the 1st July, 1861, filed a petition denying her claim against him. The wife's application to sue as a pauper was rejected on 27th January, 1862. The husband died on 30th August, 1867. On the 13th May, 1869, the widow brought her suit to recover the balance of prompt dower and the whole of the deferred dower. *Held*, that she could recover the latter. The cause of action in respect of deferred dower could not arise until the husband's death. But the cause of action in respect of prompt dower arises upon demand by the wife and refusal by the husband. **KHAJARANNISSA v. RISANNISSA BEGUM**, [v 84

4. — *Lien for dower—Hypothecation—Reg. VII of 1832.*] The widow's claim for dower under the Mahomedan law is only a debt against the husband's estate. It may be recovered from the heirs to the extent of assets come to their hands. It does not give the widow a lien on any specific property of the deceased husband so as to enable her to follow that property, as in the case of a mortgage, into the hands of a *bonâ fide* purchaser for value. *Sembla.*—Under the Mahomedan law, there is not hypothecation without seisin; but a creditor, whether widow or any other creditor, if in possession of the husband's property with the consent of the debtor or his heirs, might hold over until the debt is paid; and the cases cited to show that the widow had a right to hold until her dower was paid off proceeded on this principle. *Per* HOBHOUSE, J.—It is very questionable whether the Court is bound to apply the Mahomedan law to this case under the provisions of Reg. VII of 1832, the case not being one of succession, inheritance, marriage, caste or religious usage; but simply one of contract. **WAHIDUNNISSA v. SHUBRATTUN** - - - - vi 54

5. — *Presumption of payment—Gift.*] Where a husband granted a dower of five lakhs of Lucknow rupees, and subsequently directed sicca rupees 4,50,000 Company's paper to be set aside for her,—*held*, under the circumstances, that this was to be presumed to be a payment on account of dower, and not a gift. **IFTIKARUNISSA BEGUM v. AMJAD ALI KHAN**, [vii P. C. 648

MAHOMEDAN LAW, DOWER—continued.

6. — *Lien on estate of husband.*] Where the widow of a Mahomedan obtained actual and lawful possession of the estates of her husband under a claim to hold them as one of the heirs and for her dower, it was *held*, that she was entitled to retain possession until her dower was satisfied, with the liability to account to those entitled to the property subject to the claim for the profits received. **BACHUN v. HAMID HOSSEIN** - i P. C. 45

7. — *Limitation—Divorce.*] Where dower is "prompt," limitation does not begin to run until the dower is demanded, or the marriage is dissolved by death or otherwise. The amount claimed, *viz.*, Rs. 16,25,000, not having been disputed in the Court of original jurisdiction, was allowed. *Quære.*—Whether, in the case of a divorce, a cause of action accrues in respect of deferred dower before the repudiation has become irrevocable, or the dower has been demanded? **MULLEKA v. JUMBEELA**, [xi P. C. 375]

8. — *Lien of widow against heir—Amount of dower unascertained.*] In a suit against the two widows of a deceased Mahomedan, who had obtained a certificate of administration to his estate under Act XXVII of 1860, the plaintiff claimed a 12-anna share of the estate and prayed for possession with mesne profits from the death of the deceased. The widows claimed to have their dower first satisfied. The amount of the dower had not been ascertained. *Held*, that the widows had a lien for their dower in the estate, and the plaintiff was not entitled to recover possession so long as any portion of the dower remained unsatisfied. This was so though the amount of dower was unascertained. **AHMED HOSSEIN v. MUSSAMUT KHADIJA** - - iii A. C. 28 note

9. — *Exigible dower — Demand—Application to sue in formâ pauperis—Cause of action.*] The prompt or exigible dower of the Mahomedan law may be regarded as a debt always due and demandable during the subsistence of the marriage, and certainly payable on demand. On a clear and unambiguous demand by the wife for payment, and refusal by the husband to pay such dower, a cause of action accrues, against which limitation begins to run. An application under s. 299, Act VIII of 1859, by a Mahomedan woman for leave to sue her husband for exigible dower in *formâ pauperis*, may be taken to express her intention of bringing an action for dower, only if she obtains leave to do so as a pauper. Until she has the Court's permission to sue, her application does not amount to a demand by way of action. A counter-petition by the husband objecting to the pauper suit being allowed, and denying his liability to pay the dower, does not alter the character of the proceedings, since no opposition on his part can constitute a cause of action unless there has been a previous demand by the wife; the option being with her to demand the dower or not, and to elect

MAHOMEDAN LAW, DOWER—continued.

her time for demanding it. **KHAJURANNISSA v. SAIFOOLLA KHAN** - - xv P. C. 306

MAHOMEDAN LAW, ENDOWMENT.

See ACT XX OF 1863.

2. — *Mortgage.*] The fact that a mortgage is in existence over property at the time when it is set apart as an endowment, does not invalidate the endowment under Mahomedan law. It is an endowment subject to a mortgage. If after a mortgage the mortgagor endows the land and dies leaving sufficient assets, his heirs are bound to apply those assets to the redemption of the mortgage, so that the endowment may take effect freed from the mortgage by the application of other assets of the endower. But, if necessary, the mortgagees may enforce the mortgage by sale of the land, and the endowment will be rendered void as against the purchaser under the mortgage, but not as against the heirs of the endower; as against the latter, the surplus sale proceeds will be subject to the endowment. **HAJRA BEGUM v. KHAJA HOSSEIN ALI KHAN** - iv A. C. 86

MAHOMEDAN LAW, GIFT—Minor—Musha, or confusion.

] Where there is on the part of a father or other guardian of a minor a real and *bonâ fide* intention to make a gift to the minor, the Mahomedan law will be satisfied without actual change of possession, and will presume the subsequent holding of the property by the father or guardian to be on behalf of the minor. Where the subjects of a gift are definite shares in certain zemindaris, the nature of the right in which is defined and regulated by the public Acts of the British Government, so that they form for revenue purposes distinct estates, each having a separate No. in the Collector's books, and each liable to the Government only for its own assessed revenue, the proprietor collecting a definite share of the rents from the ryots, and having a right to this definite share and no more, the rule of the Mahomedan law as to *musha*, which makes the gift of undivided property invalid, does not apply. *Quære.*—Whether the law relating to *musha* applies to those cases in which the owner gives all his own interest in undivided property? **AMEEROONISSA KHATOON v. ABAD- OONISSA KHATOON** - - xv P. C. 67

MAHOMEDAN LAW, GUARDIAN—Sale by guardian of property of minor—Purchase, right of.

] Under the Mahomedan law, a sale by a guardian of property belonging to a minor is not permitted otherwise than in case of urgent necessity or clear advantage to the infant. A purchaser from such guardian cannot defend his title on the ground of the *bonâ fides* of the transaction. An elder brother is not in the position of a guardian having any power as such over the property of his minor sisters. **BUKSHAN v. MALDAI KOORI** - iii A. C. 423

MAHOMEDAN LAW, INHERITANCE—Illegitimate

sons—Brothers—Consanguinity—Nasab.] The children of fornication or adultery (*wahid-uz-zina*) have no *nasab* or consanguinity, hence the right of inheritance being founded on *nasab*,

MAHOMEDAN LAW, INHERITANCE—continued.

one illegitimate brother cannot succeed to the estate of another. **SHAHEZADI BEGUM v. HIMMUT BAHADUR** - - - iv A. C. 108

2. — *Insanity—Exclusion from inheritance.* Mental derangement is no impediment to succession under the Mahomedan law. **MAHAR ALI v. AMANI** - - - ii A. C. 306

MAHOMEDAN LAW, MARRIAGE—Infant—Consent—Apostate father. The consent of the father was held not necessary to the marriage of a Mahomedan infant girl, he being an apostate from the Mahomedan faith; this being so the consent of the mother was sufficient. **IN THE MATTER OF MAHIN BIBI** - xiii 160

2. — Where the nearest guardian of a minor was precluded from giving his consent to the marriage of the minor, the marriage contracted by consent of the mother of the minor was held to be valid by Mahomedan law. **KALOO v. GURIBOLLAH** - - - xiii 163 note

MAHOMEDAN LAW, PRE-EMPTION—Europeans—District of Cachar. The right of pre-emption arises from a rule of law by which the owner of the land is bound. It is essential that the vendor should be subject to the rule of law. Therefore, where the vendor of certain land situate in Cachar was a European, the Court held that there was no right of pre-emption. **POORNO SINGH v. HURRYCHURN SURMAH** x 117

2. — *Act XXIII of 1861, s. 14—Property sold in execution of decree.* S. 14 of Act XXIII of 1861 is not applicable to permanently settled estates in Sylhet, nor to estates in any district of Bengal, unless extended thereto. When property is sold by public auction at a sale in execution of a decree, and the neighbour or partner has the same opportunity to bid for the property as other parties present in Court, the law of pre-emption does not apply. **ABDUL JABEL v. KHELAT CHANDRA GHOSE** [i A. C. 106]

3. — *Talab-istihad—Ceremonies.* It is necessary to the enforcement of the right of pre-emption that all the prescribed formalities should be strictly complied with. To the ceremony of istihad or talab-istihad, it is essential that there should be an express invocation of witnesses. **PROKAS SINGH v. JAGESWAR SINGH** - - - ii A. C. 12

4. — *Vicinage.* The right of pre-emption on the ground of vicinage is limited to parcels of land and houses, and does not extend to the purchase of an entire estate, even though it be entirely surrounded by the lands of the would-be pre-emptor. **ABDUL AZIM v. KHOND-KAR HAMED ALI** - - - ii A. C. 68

5. — There is no judicial finding to the effect that the custom of pre-emption is recognized among the Hindus of the province of Behar. It is doubtful whether, even under Mahomedan law, the owners of two adjacent lakhiraj estates, wholly unconnected with one another, could either of them claim a right of pre-emption on the ground of vicinage. No such right of pre-emption on the ground of

MAHOMEDAN LAW, PRE-EMPTION—continued.

the mere vicinage has been known to exist among Hindus. **KANTIRAM v. WOLI SAHU**, [ii A. C. 330]

6. — *Right of partner to pre-emption in sale of villages or large estates—Vicinage.* According to the Mahomedan law, a partner has a right of pre-emption in villages or large estates. But a neighbour cannot claim such a right on the ground of vicinage. **IN THE MATTER OF THE PETITION OF CHATTERNATH JHA alias JHINGHA JHA; MAHOMED HOSSEIN v. MOHSIN ALI** - - - vi F. B. 41

7. — *Khalit—Sharik—Partition, effect of, as to pre-emption.* The word 'khalit' is not improperly used in a plaint in a pre-emption suit to designate a sharik or partner in the substance of a thing; and if it is not clear whether the plaintiff claimed pre-emption as khalit or sharik, it may be shown by express words, or it may be inferred from the written statement whether the plaintiff claimed on the one or on the other ground. Where the intention of the co-proprietors of an estate is to make a complete batwara of the whole, but an inconsiderable part is by oversight or accident left out of the division, that will not have the effect of giving one co-proprietor a claim of pre-emption on the sale to a stranger by another co-proprietor of his share or division of the estate. *Semble.*—Where an integral portion or property, as a wall, is left purposely joint and undivided, the community of interest continues. **LALA PRAG DUTT v. BANDI HOSSEIN** - - - vii 42

8. — *Right of, in large or small estates.* The right of a shareholder to pre-emption exists whether the parcel of land sold, and in respect of which the claim is made, be large or small. **JEHANGIR BUKSH v. LALA BHIKARI LAL** - - - vi 42 note

MAHATAB SINGH v. RAMTAHAL MISSEER, [vi 42 note]

9. — *Owners of separated share of estate—Shafes khalit.* The proprietor of a divided one-anna share in a four-anna share of an estate is not entitled to a right of pre-emption as a *Shafes Khalit* in the remaining three-anna share. *Quere.*—Whether, if there remained any adjoining ground in which the community of interest still continued since the separation, he would be entitled in right of vicinage to pre-emption, the point not being allowed to be taken. **MAHADEO SINGH v. MUSSAMUT ZITANNISSA** - - - vii 45 note

10. — *Irrigation.* Under the Mahomedan law, the owner of the land, through which the land in respect of which a right of pre-emption is claimed, receives irrigation, has a preferential right to purchase rather than a mere neighbour. **CHAND KHAN v. NAIMAT KHAN** - - - iii A. C. 296

11. — *Mahomedan vendor and co-sharer, and Hindu purchaser.* *Per* PEACOCK, C. J., and KEMP and MITTER, JJ.—A Hindu purchaser is not bound by the Mahomedan law of pre-

MAHOMEDAN LAW, PRE-EMPTION—continued.

emption in favour of a Mahomedan co-partner, although he purchased from one of several Mahomedan co-parceners; nor is he bound by the Mahomedan law of pre-emption on the ground of vicinage. A right of pre-emption in a Mahomedan does not depend on any defect of title on the part of his Mahomedan co-partner to sell except subject to the right of pre-emption, but upon a rule of Mahomedan law, which is not binding on the Court, nor on any purchaser other than a Mahomedan. *Per NORMAN and MACPHERSON, JJ. (dissentientes).*—Wherever a Mahomedan co-sharer or neighbour has a right of pre-emption, and his property is sold by his neighbour or co-sharer, also a Mussulman, his right is not defeated by the mere fact that the purchaser is a Hindu. *KUDRATULLA v. MAHINI MOHUN SHAHA; SAYAMA KUMAR ROY v. JAN MAHOMED; FARMAN KHAN v. BHARAT CHANDRA SHAHA CHOWDRY.*

[iv F. B. 184]

12. — *Talab-istihad—Mode of performance.* The personal performance of the talab-istihad, or demand for pre-emption by the pre-emptor, depends on his ability to perform it. He may do it by means of a letter or messenger, or may depute an agent, if he is at a distance and cannot afford personal attendance. *WAJID ALI KHAN v. LALA HANUMAN PRASAD, iv A. C. 139*
IMAMUDDIN v. SHAH JAN BIBI - vi 167 note

13. — *Talab-mawasabat.* According to the Mahomedan law, the mere fact of the pre-emptor taking a short time before performance of the talab-mawasabat for ascertaining whether the information conveyed to him was correct or not, does not invalidate his right. The Mahomedan law allows a short time for reflection before performance of the first demand. *AMJAD HOSSEIN v. KHARAG SEN SAHU.*

[iv A. C. 203]

14. — *Talab-mawasabat and talab-istihad—Performance of preliminary ceremonies.* In the case of pre-emption strict proof is necessary of the performance of the preliminaries. According to the Mahomedan law, strict adherence to the rules for the performance of the talab-istihad is especially necessary. In performing the talab-istihad the pre-emptor must clearly declare his right and invoke witnesses. He must declare that "he has a right of pre-emption to which he has laid claim, and that he still claims it," and invokes witnesses "to bear witness therefore to the fact." *JADU SINGH v. RAJKUMAR - - iv A. C. 171*

15. — *Talab-mawasabat—Delay in making claim.* On hearing of a sale, the pre-emptor must immediately make his demand called talab-mawasabat. Where a pre-emptor, on hearing of the sale of a property to which he had a right of pre-emption, went to the property in dispute and there declared his right as pre-emptor,—*held*, that such delay was fatal to his claim. *RAM CHARUN v. NARBIR MAHTON.*

[iv A. C. 216]

16. — *Subsequent re-conveyance by purchaser to vendor—Effect of, as against right of*

MAHOMEDAN LAW, PRE-EMPTION—continued.

pre-emptor.] Where one of two neighbours has sold his land to a stranger, and the other neighbour has thereupon claimed a right of pre-emption, no subsequent dissolution of the contract affects the right of the pre-emptor which has once accrued and been duly asserted. *BHADU MAHOMED v. RHADA CHURN BOLIA,*

[iv A. C. 219]

17. — *Performance of talab-istihad—Invocation of witnesses to demand.* According to the Mahomedan law, it is essential to the performance of the talab-istihad that third persons should be formally called upon, either in the presence of the purchaser or on the land; or, if the vendor is in possession, in the presence of the vendor, to bear witness to the demand. *GOLAKRAM DEB v. BRINDABAN DEB - vi 165*

18. — *Talab-istihad.* It is not a binding rule of law that the talab-istihad by a pre-emptor, if made within a day after the receipt of intelligence of the purchase, is necessarily in time for the preservation of the right of pre-emption. The due and sufficient observance of the formality of talab-istihad, as to time, is a question to be decided in each case by the Court which has to deal with the facts. *JAMILAN v. LATIF HOSSEIN - viii F. B. 160*

19. — *Performance of preliminary ceremonies—Talab-istihad—Hindus.* To the due performance of the ceremony of talab-istihad, it is not necessary that any particular form of words should be employed. *RAMDULAB MISSEK v. JHUMACK LAL MISSEK, viii 455*

20. — *Suit to enforce pre-emption to portion of property sold.* Under a deed of sale the vendor conveyed to the purchaser five lots of land. In a suit by a third party to enforce a right of pre-emption in respect of one out of the five plots,—*held*, that he could divide the bargain and sue on the ground of pre-emption for a portion only of the property covered by the deed of sale. *IZZATULLA v. BHIKARI MOLLA - - - - vi 386*

RAGHUNUNDAN SINGH v. MAJBUTH SINGH,
[vi 387 note]

21. — The property of several co-sharers, some of whom were minors, was sold to a single purchaser, under a deed of sale, which contained a covenant by the vendors, who professed to act on behalf of themselves and the minors, that they would compensate the vendee for any loss he might incur should the minors, when they came of age, not ratify the sale. A. sued to enforce her right of pre-emption in respect of the lands sold. The lower Appellate Court was of opinion that A. could not enforce her claim of pre-emption in respect of the share of the minors; and on the Court's suggestion the plaint was amended, so as to ask for enforcement of her claim in respect only of the shares of the vendors of full age. *Held*, that A. was bound to claim her right against all the shares, and could not enforce it in respect of some only. *ABDOOL GUFOR v. MUSSAMUT NURBANU - i A. C. 78*

MAHOMEDAN LAW, PRE-EMPTION—continued.

22. — *Surrender of right of pre-emption before sale.*] Where an offer of sale was made to a pre-emptor, and he refused to avail himself of it, and consented to a sale to a stranger, — *held*, that after a sale to a stranger he could not set up his right of pre-emption. **BEAJA KISHOR SURMA v. KIRTI CHANDRA SURMA**, [vii 19]

But see *In re Jehanga Buksh* (vii 24 note), where, however, the point was not directly decided, there being no sufficient proof of the refusal to purchase and no evidence of consent to sell to another.

23. — *Refusal to purchase when property offered for sale—Subsequent suit to enforce right—Estoppel.*] A Mahomedan offered to sell his share of certain property to a partner, and on the refusal of the latter to purchase the same, sold it to a stranger. *Held*, the partner could not sue to enforce his right after the sale. **TORAL KOMHAR v. MUSSAMUT AUOHHI**, ix 253

24. — *Hindus—Province of Behar—Custom.*] A right or custom of pre-emption is recognized as prevailing among Hindus in Behar and some other provinces of Western India. In districts where its existence has not been judicially noticed, the custom will be matter to be proved; such custom, when it exists, must be presumed to be founded on and co-extensive with the Mahomedan law upon that subject, unless the contrary be shown. The Court may, as between Hindus, administer a modification of that law as to the circumstances under which the right may be claimed, where it is shown that the custom in that respect does not go the whole length of the Mahomedan law of pre-emption; but the assertion of the right by suit must always be preceded by an observance of the preliminary forms prescribed in Mahomedan law. **FAKIR RAWOT v. EMAM-BAKSH** — — — — — Sup. Vol. 35

RAMDULAR MISSEER v. JHUMACK LAL MISSEER, [viii 455]

25. — *Mortgage—Foreclosure of equity of redemption.*] In the case of a mortgage, the right of pre-emption does not arise until the equity of redemption is finally foreclosed. (**BAYLEY, J., dissenting**). **GURDIAL MUNDAR v. TEKNARAYAN SINGH** — — — — — Sup. Vol. 166

26. — *Mortgage—Foreclosure—Possession by mortgagee.*] On the foreclosure of a mortgage, after the expiry of the year of grace, but before a decree for possession had been obtained by the mortgagee, a suit to enforce the right of pre-emption in respect of the property mortgaged is maintainable. **TARA KUNWAR v. MANGRI MEEAH** — — — — — vi Ap. 114

MAHOMEDAN LAW, USURY—Interest—Act XXVIII of 1855.] The custom of taking interest as between Mahomedans is recognized by the Courts. *Sembo.*—*Per PHEAR, J.* (dissenting from *Ram Lall Mookerjee v. Haran Chunder Dhur*, iii O. C. 130). Act XXVIII of 1855 repealed the Mahomedan laws relating to usury. By "laws relating to usury" the legis-

MAHOMEDAN LAW, USURY—continued.

lature meant laws affecting the rate of interest. **MIA KHAN v. BIBI BIBIJAN** — — — v 500

MAHOMEDAN LAW, WILL—Infidel executor.]

The appointment by the will of a Mahomedan of an infidel executor does not invalidate the will. All the acts of such an executor, and his dealings with the property under the will, until he is removed and superseded by the Civil Court, are good and valid. *Quære.*—Whether if an application were made by a person interested in the will to have the infidel executor removed, and a proper person appointed in his place, the application would be granted? **JEHAN KHAN v. MANDY** — — — — — i S. N. xvi

MAINPRIZE—Power of High Court to issue writ of.] A writ of mainprize could only be issued where the party applying for it was bailable, and had offered security, but bail had been refused: it could not be issued to a prisoner confined under Reg. III of 1818, which authorizes his detention absolutely and unconditionally, and gives him no right to demand to be released on bail. The writ is one which could be issued only on the Common Law Side of the Court of Chancery in England. The power of the Common Law Side of the Court of Chancery to issue such writ was not conferred on the Supreme Court, nor is there anything in the Charter of the High Court to give that Court power to issue it. **IN THE MATTER OF AMEER KHAN** — — — — — vi 456

MAINTENANCE.

See **CHAMPERTY.**

MAINTENANCE, FUTURE ATTACHMENT OF.

See **ATTACHMENT.**

MAINTENANCE, ORDER OF CRIMINAL COURT

FOR—Children—Criminal Procedure Code (Act XXV of 1861), s. 316.] On an application by a wife for maintenance under s. 316, Act XXV of 1861, the Magistrate held she had failed to establish her right of maintenance under that section, but he awarded maintenance to her for her two infant children, though the husband stated he was willing to take charge of them provided they lived with him. *Held*, the order was illegal. **GOPAL MAZUMDAR v. HABO SUNDARI BAISTAMI** — — — — — viii Ap. 20

2. — *Criminal Procedure Code (Act X of 1872), s. 536.*] An order for maintenance had been made under s. 536, Act X of 1872, against a Mahomedan, and came before the Magistrate on petition from the wife for the purpose of being enforced. The Magistrate called on the husband to show cause why the order should not be enforced, and the husband appeared, and in the Magistrate's presence divorced his wife by words sufficient by Mahomedan law for that purpose. *Held*, the Magistrate should have enforced the order until application was made by the husband under s. 537 for alteration of the order owing to the "change of circumstances" which had occurred. The husband was bound to pay maintenance up to the time of divorce. *Quære.*—Whether what occurred was such a change of circumstances within s. 537 as would justify an alteration or withdrawal of the order? **NEPOOR AURUT v. JURAI** — — — x Ap. 83

MAINTENANCE, SUIT FOR.

See DECLARATORY DECREE, SUIT FOR.
HINDU LAW, MAINTENANCE.

MAJORITY, AGE OF—European British subject.]

A. stated that he was born in 1848; that his great grandfather was, according to the tradition of the family, a European (but of what country in Europe he did not know) residing at Madras, and his grandmother a native, Hindu or Mahomedan; that he did not know whether his great grandfather and great grandmother were married, or who his grandmother was, or whether his grandfather was married; that his father married a lady bearing an English name; that he himself and all his relations were Christians; that he was born in Calcutta, and knew of no relatives in Europe. *Held*, that he was the legitimate descendant of a European British subject, and therefore his age of majority was 21 years. *BOLLO v. SMITH* - - - - i O. C. 10

2. — Act XL of 1858—Majority of Hindus.]

Every person not being a European British subject, who has not attained the age of 18 years, is a minor for the purposes of Act XL of 1858; and unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of his person and the charge of his property are subject to the jurisdiction of the Civil Court, and he is a minor, whether proceedings have been taken for the protection of his property or the appointment of a guardian, or not. *MADHUSUDAN MANJI v. DEBIBOINDA NEWGI* - - - - i F. B. 49

3. — The age of majority fixed by Act XL of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects. *LAKHIKANT DUTT v. JAGABANDHU CHUCKERBUTTY*, [iii Ap. 79]

4. — *Will, probate of.*] A Hindu domiciled with his family at Serampore, in the Zilla of Hooghly, died, leaving a will, in which was the following direction:—"In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, H. C. G., who has attained the age of majority, remains executor, for my younger son, G. C. G., is an infant; but as my eldest sister, S. H. D., is prudent and sensible, all the affairs of the estates shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, G. C. G., will come of age, then both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall not remain." G. C. G., after attaining the age of 16, but before he had reached the age of 18, applied for grant of probate of his father's will to himself, jointly with his brother H. C. G., in respect of property in Calcutta. The Court below refused to grant probate of the will

MAJORITY, AGE OF—continued.

to the son of the testator, on the ground that he was under the age of 18 years. *Held* on appeal that he had not attained the age contemplated in his father's will at which he was to be joined in the executorship with his brother. *IN THE GOODS OF GANGA PRASAD GOSAIN* - - - - iv Ap. 43
S. C. on appeal - - - - - v 80

5. — High Court, original jurisdiction.]

The period of minority among Hindus, by the operation of Act XL of 1858, extends to eighteen years, as well within the original civil jurisdiction of the High Court as within the jurisdiction of the Civil Courts in the mofussil, and that whether the father is alive and of full age or not. *JADUNATH MITTER v. BOLYCHAND DUTT* - - - - vii 607

6. — *European British subject.*] The defendant was, at the time of making a promissory note, of the age of 19 years. The evidence showed that her father was born at sea, and lived the greater part of his life at Calcutta. It was not shown of what country his parents were, or whether the ship in which he was born was a British ship. The defendant pleaded minority at the time of making the note. *Held*, the defendant was not a European British subject, and not exempted from the operation of Act XL of 1858. She, therefore, attained her majority at 18 years. *ARCHER v. WATKINS* - - - - viii 372

7. — *Hindu, resident and domiciled in Calcutta, majority of.*] The age of majority of a Hindu resident and domiciled in the town of Calcutta, and not possessed of any property in the mofussil, is the end of fifteen years. *CALLY CHURN MULLICK v. BHUGGOBUTTY CHURN MULLICK; IN THE MATTER OF BENUD BEHARY MULLICK* - - - - i F. B. 231

8. — *Sale of estate by Mahomedan proprietor—Reg. XXVI of 1793, s. 2.]* *Semble.*—In respect of a transaction in which a Mahomedan, the proprietor of an estate paying revenue to Government, disposes of that estate, the period of minority is that of eighteen years, as fixed by s. 2, Reg. XXVI of 1793. *AMEER-ROONNISSA KHATOON v. ABADOONNISSA KHATOON* - - - - xv P. C. 67

MALICIOUS PROCEEDINGS.

See CHAMPERTY.

MALICIOUS PROSECUTION.

See CAUSE OF ACTION.

LIMITATION ACT XIV OF 1859,
s. 1, CL. 2.

2. — *Onus probandi.*] In an action for malicious prosecution, it is for the plaintiff to prove the existence of malice and want of reasonable or probable cause, before the defendant can be called upon to show that he acted *bona fide* and upon reasonable grounds, believing that the charge which he instituted was a valid one. *GAUR HARI DAS ADHIKARI v. HAYAGRIB DAS MOHANT* - - - - vi 371

MALICIOUS PROSECUTION—continued.

3. — *Reasonable and probable cause.*] In an action for damages for a malicious prosecution, it is not sufficient to prove merely the dismissal of the charge. It must be proved that the prosecution was without reasonable and probable cause. *GUNNESH DUTT SINGH v. MUGNEERAM CHOWDHRY* - - xi P. C. 321

4. — *Action for damages—Onus probandi.*] In an action for damages for malicious prosecution, where it is found that the charge was made not maliciously, but with good and reasonable cause, the onus is on the plaintiff, though the charge against him was dismissed, to prove malice on the part of the defendant. Malice is not to be inferred merely from the acquittal of the plaintiff. *ROSHAN SIKKAR v. NABIN CHANDRA GHATAK* - - - vi 377 note

5. — But if the charge were found to be false, the onus would be on the defendant to show that he had reasonable and sufficient cause for making the charge; and on his failure to show any such cause, malice may be inferred. *BISWANATH RAKHIT v. RAMDHAN SIKKAR*, [vi 375 note

MALIKANA, SUIT FOR.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 12.

REG. VIII OF 1793, s. 46.
SPECIAL APPEAL.

MANAGER, APPOINTMENT OF.

See CIVIL PROCEDURE CODE, s. 243.

MANAGER, APPOINTMENT OF, BY COURT OF WARDS.

See SUIT ON BEHALF OF DECEASED LUNATIC'S ESTATE.

MANAGER OF ESTATE OF LUNATIC, SECURITY BY.

See SALE IN EXECUTION OF DECREE.

MANAGER OF ESTATE UNDER ATTACHMENT.

See ACT XI OF 1859, s. 5.

MANAGER OF JOINT ESTATE.

See REG. V OF 1812, s. 26.

MANAGER OF JOINT HINDU FAMILY.

See HINDU LAW, JOINT FAMILY.

MANAGER OF TWO ESTATES, SUIT FOR BALANCE OF ACCOUNT BY ZEMINDAR AGAINST.

See CAUSE OF ACTION.

MANAGER, ORDER APPOINTING, UNDER REG. V OF 1812.

See APPEAL.

MANDAMUS.

See BENG. ACT VI OF 1863.
RULES OF HIGH COURT.

2. — *Matter concerning revenue — License to sell liquor — Jurisdiction of High Court—Act XI of 1849, s. 9—Beng. Act III of 1873, s. 1—21 Geo. III, c. 70, s. 8.*] Under Act XI of 1849, s. 9, as amended by Beng. Act III of 1873, s. 1, whenever a license is granted for the retail sale of intoxicating liquors, the Collector is authorized to demand "such fee, tax, or duty as may from time to time be fixed

MANDAMUS—continued.

with the sanction of the Board of Revenue, or a fee, tax, or duty, adjusted or regulated in such manner, and in accordance with such rules, as the Board of Revenue may prescribe." The Board of Revenue having notified that liquor licenses for the year ending March 31st, 1874, would be put up to public auction, certain licensed liquor vendors moved the High Court for a mandamus to compel the Board of Revenue to issue rules prescribing the fee payable for licenses. *Held*, that the matter wholly related to the revenue, and, therefore, by 21 Geo. III, c. 70, s. 8, High Court had no jurisdiction. IN THE MATTER OF AUDHUR CHUNDRAS SHAW, and IN THE MATTER OF ACT XI OF 1849 AS AMENDED BY BENG. ACT III OF 1873 - - - xi 250

MANDAMUS, ORDER ABSOLUTE FOR.

See LETTERS PATENT, CL. 15.

MAPS, INSPECTION OF.

See CHUR LANDS.

MARRIAGE.

See HINDU LAW, MARRIAGE.
MAHOMEDAN LAW, MARRIAGE.

MARRIAGE, CONTRACT TO INVALIDATE.

See CONTRACT.

MARRIAGE, DECLARATION OF NULLITY OF.

See DIVORCE ACT.

MARRIAGE OF MAHOMEDAN MOTHER WITH CHRISTIAN IN MAHOMEDAN FORM.

See CUSTODY OF CHILD.
MARRIAGE, VALIDITY OF.

MARRIAGE PRESENTS, SUIT TO RECOVER.

See CONTRACT.

MARRIAGE, PRESUMPTION OF.

See PENAL CODE, s. 498.

MARRIAGE, PROMISE TO GIVE IN.

See JURISDICTION OF CIVIL COURT.

MARRIAGE, SUIT TO HAVE HINDU MARRIAGE DECLARED INVALID.

See JURISDICTION OF CIVIL COURT.

MARRIAGE, VALIDITY OF.

See DIVORCE ACT.

2. — *Adoption by Christians of Mahomedan religion for purpose of marriage—Bigamy.*] *Quære.*—Whether a marriage, according to Mahomedan rites, between a married Christian man and a Christian woman, both of whom became Mahomedans in order to effect the marriage, is valid? *SKINNER v. ORDE*, [x P. C. 125

3. — *Law of domicile—Law of place of celebration.*] *Semble.*—A marriage celebrated in accordance with the law of the domicile of the parties may be valid, although it would be invalid by the law of the place where the marriage was celebrated. *GASPER (falsely called GONSALVES) v. GONSALVES* - xiii 109

MARRIAGE SETTLEMENT, ORDER AS TO.

See DIVORCE ACT.

MARRIED WOMAN, ENTICING AWAY.

See PENAL CODE, s. 498.

MARRIED WOMAN, LIABILITY OF.

See SUCCESSION ACT, s. 4.

MARRIED WOMAN'S PROPERTY ACT.

See SUCCESSION ACT, s. 4.

MASSES, BEQUEST FOR PERFORMANCE OF.

See WILL.

MASTER, LIABILITY OF.

See BILL OF LADING.
CHARTER PARTY.

MASTER, LIEN OF, FOR WAGES AND DISBURSEMENTS.

See BOTTOMRY-BOND HOLDER.

MASTER AND SERVANT.

See LIMITATION ACT XIV OF 1859,
s. 2.

3. — *Trespass—Liability of master for acts of servant.*] The appellant having obtained a decree for khas possession of a share in a zemindary, had refused to recognize the ryots whom the farmers under her co-sharers had settled in the estate; and her servants cut and carried off the crops of those ryots. *Held* by GLOVER, J., that the appellant was liable for the acts of her servant, which were done in furtherance of her known wishes and for her benefit. *Held* by LOCH, J., that those acts were beyond the ordinary scope of the servants' duty; and that, unless it could be shown that the appellant ordered or ratified the acts, she was not liable. In the present case the circumstances gave rise to a strong presumption that the acts were done with her knowledge, which presumption had not been rebutted, and therefore she was liable. *SHAMASUNDARI DEBI v. DUKHU MANDAL* — — — — — ii A. C. 227

3. — *Trespass — Ratification — Damages.*] The plaintiff let a cargo-boat to U. C., who had been employed by the defendants to land certain goods. During the landing of the goods, a dispute as to the terms of hiring arose, and U. C. refusing to pay what was alleged by the plaintiff to be due to him for hire of his boat, the plaintiff refused to give up 53 bales then remaining unlanded from his boat. U. C. communicated the circumstances to an assistant in defendant's firm, who afterwards went with U. C. and forcibly took the goods from the plaintiff's boat, without satisfying the plaintiff's lien thereon, and the defendants received them into their godowns. It was proved that U. C. and the assistants acted without the knowledge or authority of the defendants, and that the defendants received the goods without any knowledge of how they had been obtained. *Held* that, in the absence of such knowledge on their part, the receipt of the goods by them did not amount to a ratification of the wrongful act of their assistant and U. C. so as to render them liable in an action by the plaintiff for damages for the same. *GIRISH CHANDRA DASS v. GILLANDERS, ARBUTHNOT*, [ii O. C. 140]

4. — *Action for harbouring or sheltering the servant of another—Notice of contract of*

MASTER AND SERVANT—continued.

service.] An action will not lie for the mere harbouring or sheltering a person who is under a contract of service to another, even with notice of such contract of service. *Blake v. Lanyon*, 6 T. R. 221, distinguished. *BRUKOWSKY v. THACKER, SPINK* — vi 107

5. — *Suit against Government for wrongful dismissal—Contract of service—Public servant—Payment of monthly wages.*] A suit for wrongful dismissal by one of its servants will lie against the Government. In a suit by a subordinate officer in the P. W. D. for wrongful dismissal against the Government, in which it was admitted that there was no time of service fixed, and in which the plaintiff put in a memo. of agreement between himself and the Government, stipulating that he should give six months' notice of his intention to leave the service of the Government, *held*, that the hiring was indefinite; and that although the plaintiff had bound himself to give six months' notice prior to leaving their service, there was no corresponding obligation on the Government to give notice before dismissing him. The Government, however, would not be allowed to exercise this power capriciously, or to the damage of the servant. An indefinite hiring in India does not mean a hiring for a year. The mere payment of wages monthly is not enough to show that a hiring is a monthly hiring. *HUGHES v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL* — — — — — vii 688

MAURASI TENURE

See ENHANCEMENT OF RENT.
TITLE.

MEASUREMENT OF LANDS.

See APPEAL.

2. — *Right of zemindar—Lakhiraj—Beng. Act VI of 1862, s. 9.*] A zemindar is not entitled to measure the lands of a lakhirajdar holding a rent-free tenure within the limits of his estate. *RANGAL SAHU v. SIALI DHAR DAS* — — — — — iii Ap. 27

3. — *Power of Collector to determine standard of measurement—Beng. Act VI of 1862, ss. 9, 10, and 11.*] In an application for assistance to measure the land of a ryot, under s. 9, Beng. Act VI of 1862, the Collector has no power, under s. 11, to fix with what pole the measurement is to be made, but such questions are to be reserved for after-proceedings, when any action is taken upon the result of such measurement. *RAMANATH RAKHIT v. MUCHIRAM PARAMANIK* — — — — — iii Ap. 68

4. — The Collector has no jurisdiction in an application by the zemindar, under s. 9, Beng. Act VI of 1862, for assistance to measure the holding of his ryot, to fix the standard of the pole with which the land is to be measured. *Semble.*—If the application had been under s. 10 of the Act, the Collector would have had jurisdiction to declare the length of the standard pole. *BRAJA KISHOR SEN v. KASIM ALI* — iii Ap. 78

MEASUREMENT OF LANDS—continued.

5. — *Per KEMP, PHEAR, MITTER, and HOOBHOUSE, JJ.*—When the right of a proprietor to make, under s. 9, Beng. Act VI of 1862, a measurement of a tenure, is disputed, solely on the ground that the pole with which the measurement is attempted to be made is not the standard pole of measurement of the *perganna*, as provided in s. 11, and the parties are at issue as to what is the length of the standard pole, the Collector has jurisdiction to enquire into and decide as to the true length of the standard pole. *COUCH, O. J., and BAYLEY, and JACKSON, J J., contra. MANMOHINI CHOWDRAI v. PREM-CHAND ROY* - - - vi F. B. 1

6. — *Title—Possession—Receipt of rent.* Where a person sues to have the assistance of the Collector to measure lands, of which he alleges himself to be the proprietor by purchase, he is not entitled to have such assistance if his title is disputed, and if he is found not to have been in possession or in the receipt of rents from the date of his purchase. *DURGA CHARAN MAZUMDAR v. MAHOMED ABBAS BHUYA* - - - vi 361

7. — *Beng. Act VI of 1862, s. 9—Lakhiraj land.* The defendant held land within the plaintiff's *patni*, paying rent to the plaintiff, and also certain *lakhiraj* lands. The plaintiff applied to the Collector for permission to make a survey and measurement of the lands of the *patni*. He was opposed by the defendant, who objected to any survey being made of the *lakhiraj* land. *Held* under Beng. Act VI of 1862, ss. 9 and 10, the plaintiff was not entitled to survey and measure the *lakhiraj* lands. *PRASANAMAYI DEBI v. CHANDRANATH CHOWDHRY* - - - ii S. N. v

MEASUREMENT, RIGHT TO, OF CO-SHARERS IN UNDIVIDED ESTATE.

See BENG. ACT VIII OF 1869, ss. 37 and 38.

MERGER — *Collateral securities — Promissory note — Mortgage — Registration Act (XX of 1866), s. 52.* B. executed and delivered to A. a promissory note, which was specially registered under s. 52 of Beng. Act XX of 1866. On the due date of the note, A. renewed the note in consideration of B.'s securing the debt by assigning to him, by way of mortgage, his (B.'s) interest in certain landed property. *Held*, that A. could proceed in a summary way upon the note, notwithstanding the mortgage. *RAMGOPAL LAW v. BLAQUIERE* - i O. C. 35

MESNE PROFITS.

See ACT XXIII OF 1861, s. 11.
HINDU LAW, STRIDHAN.
INTEREST.

LIMITATION ACT XIV OF 1859,
s. 15.

LIMITATION REG. III OF 1793.
VENDOR AND PURCHASER.

2 — *Act XXIII of 1861, s. 11 — Civil Procedure Code, ss. 196 and 197.* Mesne profits are in themselves simply damages which

MESNE PROFITS—continued.

do not exist as an obligation to be discharged until they have been awarded by a Court competent to do so. Therefore, according to s. 11, Act XXIII of 1861, mesne profits payable at the time of execution must mean mesne profits which have been at that time directed to be paid by a decree of Court. A. obtained a decree against B. for recovery of possession of certain property, and for mesne profits up to the date of the suit; but the decree was silent as to mesne profits after that time. *Held*, A. was not barred, by the provisions of s. 11 of Act XXIII of 1861, from bringing a suit against B. for mesne profits during the time that A. was kept out of possession after the decree. *HARAMOHINI CHOWDHRAIN v. DHANMANI CHOWDHRAIN* - - i A. C. 138

3. — *Decree for possession—Act XXIII of 1861, s. 11.* A., in execution of a decree of the lower Court against B., obtained possession of certain land therein mentioned. On appeal by B., the High Court reversed the decree of the lower Court, and ordered restitution of the property to B.; but no mention of mesne profits was made in the decree. B. then sued for recovery of mesne profits for the period during which A. had been in possession. *Held*, that such a suit would not lie. The question of mesne profits ought to have been decided in execution under s. 11 of Act XXIII of 1861. *SHIB NARAYAN POHRAJ v. KISHOR NARAYAN POHRAJ* - - - i A. C. 146

4. — *Upachowki or istomrari tenure.* A. sued B. for possession with mesne profits of a share in certain talooks, alleging that he purchased it in execution of a decree. B. proved that he held the lands under an upachowki title. The lower Court, however, awarded to A. mesne profits for six years. *Held*, that B. having proved his upachowki title, A. could only be entitled to a share of the upachowki *jamma* which was not of the nature of mesne profits, but of rent; and therefore, a suit to recover that could not be brought in the Civil Court. *SHIB KUMAR JOTI v. KALI PRASAD SEN* - - - i A. C. 167

5. — *Cultivating ryot ejected by zemindar.* When a cultivating ryot is ejected by his zemindar, the mere rent of the land realized by the zemindar from another tenant is not necessarily the measure of the damage sustained by the ryot and recoverable by him as mesne profits. *BHIO CHANDRA MOZOOMDAR v. BAMUNDAS MOOKERJEE* - iii A. C. 88

6. — *Act XIV of 1859—Limitation—Suit for possession.* In a suit instituted after Act XIV of 1859 came into force, mesne profits can only be recovered for the six years next preceding the institution of the suit. A regular suit for mesne profits will lie after a suit for possession, if in the latter suit no question of mesne profits was raised or decided. *PRATAP CHANDRA BURUA v. SWARNAMAYI*,
[iii Ap. 81]

7. — *Decree-holder in possession — Rents due previous to his possession.* When a decree-

MESNE PROFITS—continued.

holder obtains possession of an estate in execution, he is not at liberty to sue the ryots for rents falling due before the date of his taking possession. His proper course is to sue the late wrongful possessor for mesne profits, including the rents. *UMES CHANDRA ROY v. SHASTIDHAR MOOKERJEE* - - - iii Ap. 99

8. — *Suit for mesne profits and possession—Civil Procedure Code, ss. 2, 7, and 196—Act XXIII of 1861, s. 11.* The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed. He appealed on the question of possession only, and obtained a decree for possession without any mention of mesne profits; and afterwards, in execution of the decree, he obtained possession of the land. *Held*, the plaintiff could afterwards bring his suit to recover mesne profits from the date of decree for the period of six years next before the commencement of the suit, exclusive of the period during which the plaintiff was in possession. *Ss. 2, 7, and 196 of Act VIII of 1859, and s. 11 of Act XXIII of 1861* were no bar to such suit. *PRATAP CHANDRA BURUA v. SWARNAMAYI; SWARNAMAYI v. PRATAP CHANDRA BURUA* - - - iv F.B.118

9. — *Act XXIII of 1861, s. 11—Execution of decree—Decree for possession.* Where, in a suit for land, the Court decreed to the plaintiff possession of the land, but made no decree in respect of mesne profits,—*held*, the plaintiff could not, under *ss. 11 of Act XXIII of 1861*, obtain an order from the Court executing his decree declaring him entitled to any or what amount of mesne profits. Under *s. 11* the question must relate to something comprised in the decree. *EKOWRI SINGH v. BI-JAYNATH CHATTAPADHYA* - - - iv A.C. 111

10. — *Execution of decrees of Privy Council—Decree for possession.* When the Privy Council declares an appellant entitled to real property, of which he was out of possession, and directs the High Court to make the enquiry necessary to ascertain what is comprised therein, and to proceed in the suit as upon the result of such enquiry may appear to be just, the High Court, on being applied to for execution, ought, besides giving possession, to ascertain and award mesne profits up to the date of giving possession. *LILANUND SINGH v. LUCKIMPUR SING* - - - v P.C. 605

11. — *Execution of decrees made on compromise—Procedure—Possession.* B. sued his brother C. for possession of certain lands. B. and C. came to an amicable settlement, one of the terms of which was that C., during his life, should retain possession of certain of the lands, and that, after his death, they should pass to B. A decree was given in accordance with the terms of the compromise. On C.'s death, his widow refused to put B. in possession of the lands. B. sought to obtain possession of the lands, with mesne profits, by executing the decree under the compromise against C.'s widow. *Held*, that he ought to proceed by regular suit. *TARA MANI DAS v. RADHA JIBAN MUSTAFI* - - - vi Ap. 142

MESNE PROFITS—continued.

12. — *Cause of action—Limitation.* The cause of action in respect to mesne profits accrues on the date on which, but for the fact of dispossession, the plaintiff would have been entitled to receive them. *LAKHI KANT DAS CHOWDEY v. RAM DYAL DAS* - - - v Ap. 61

13. — *Right to mesne profits—Co-sharers.* Plaintiff and defendant and certain others were co-sharers of an *abad*. Each agreed to cultivate certain portions, and afterwards to give up any excess land cultivated by him. Defendant cultivated 399 bigas in excess of his share. Plaintiff sued him and got possession of the excess land on payment to the defendant of a compensation for the expense of cultivation, and then brought his suit for mesne profits. *Held*, that he was not, under the circumstances, entitled to mesne profits. *DEBNARAYAN DEB v. KALI DAS MITTER*, vi Ap. 70

14. — *Regs. XV of 1793 and I of 1798.* A. granted a *zuripeahgi* lease of certain lands to the defendants for a fixed term, which was to continue after the expiry of the term so long as the money advanced remained unpaid. Shortly afterwards A. evicted the defendants and sold the land to C. and D. The defendants sued A., C., and D., and obtained a decree for possession and mesne profits. They never got possession, but they recovered the mesne profits from A. On the expiry of the lease, C. and D. were held, in a suit brought by them, entitled to redeem. *Held*, the defendants were not liable, under *Reg. XV of 1793 or I of 1798*, to account for the mesne profits which they had recovered. *WUZEEH-CONNISSA v. BEBEE SAEEDUN* - *Sup. Vol. 613*

15. — *Default caused by act of another party—Limitation Act XIV of 1859—Assam—Suit for partition.* Where a purchaser of a four-anna share was kept out of possession of a portion of the property sold, and having recovered judgment in a suit brought for possession and mesne profits against the vendor, an arrangement was come to pending appeal, that within a year the parties should appoint an arbitrator to fix on the shares and make a division, and in default of such appointment an application should be made to the hakim; but that if no such application was made within the year, and a suit should be subsequently brought, the party suing should lose his right to mesne profits,—*held* that, under the circumstances, the defendant having prevented the plaintiff from making the necessary application within the year, and proceedings having gone on for years to carry out the partition, the plaintiff was, on the termination of those proceedings, entitled to sue for mesne profits. Where proceedings were going on to effect a partition, the right to particular properties being in dispute, — *held*, that the right to mesne profits accrued at the termination of those proceedings, and that the party improperly kept out of possession was entitled to sue for all mesne profits during the period of his non-possession, subject to any grounds which the defendant could show which would entitle

MESNE PROFITS—continued.

a Court of equity to deprive the plaintiff of his rights. In a suit brought in January, 1862, respecting property situated in Assam, mesne profits for twenty-eight years, prior to 1854, were decreed subject to any equitable claims for deducting any portion, Act XIV of 1859 not applying to Assam previous to July, 1862. Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. **NIL KAMAL LAHURI v. SRIGUNOMANI DEBI** - - - vii P.C. 118

16. — *Principle of calculating—Suit by cultivator—damages.*] Where the plaintiff, who was a cultivator, sued for possession of certain land, of which he had been dispossessed by the defendant, with mesne profits, and the Judge gave him a decree for possession, and as to mesne profits decreed that the plaintiff should have the actual profits realized from the land, and if that could not be ascertained (as to which the burden of proof, he said, should be on the defendant), then, according to the capabilities of the soil in an average season, making the deductions necessary on account of the bad seasons, expense of cultivation, rise and fall of prices, and cost of seed; and in the case of indigo, the value of the raw produce and not of the manufactured article: it was held, that the principle on which damages were awarded was a correct principle, where the plaintiff was himself a cultivator. **WATSON v. PYARI LAL SHAHA** - - - vii 175

SAUDAMINI DEBI v. ANAND CHANDRA HALDAR - - - - - vii 178 note

17. — *Suit for—Liability of ijaradar under an ijara granted by party in wrongful possession.*] A suit for mesne profits held to lie against a party who took an ijara pending litigation, though the decree for possession with profits was against the ijaradar's landlord. **BIDYAMAYI DEBIA CHOWDHRAIN v. RAM LAL MISER** - - - - - viii Ap. 80

18. — *Calculation of—Cultivation of lands by person in wrongful possession.*] When a person in wrongful possession of land has himself occupied and cultivated it, the proper principle on which the amount of mesne profits is to be calculated is to ascertain what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of the unlawful occupation by the wrong-doer. **ASMUT KOORER v. INDURJEET KOORER** - - - - - Sup. Vol. 1003

BINDABUN CHUNDER SIRCAR v. ROBERTS,
[Sup. Vol. 1004 note

19. — *Prior suit for possession without mesne profits.*] A party can bring a suit for mesne profits after he has obtained a decree for possession in a prior suit, in which no provision had been made in the valuation of the suit for mesne profits. **SHIVASUNDARI DEBI v. RAMSHAMAYAT KURMI** - - - i S. N. iii

MESNE PROFITS—continued.

20. — *Execution of decree—Interest.*] In construing the provisions of s. 11, Act XXIII of 1861, notwithstanding certain earlier decisions to a contrary effect, all the Indian High Courts have now recognized it to be settled law that, where the decree is silent touching interest, or mesne profits, subsequent to the institution of the suit, the Court executing the decree cannot, under the section in question, assess or give execution for such interest or mesne profits, but that the plaintiff is at liberty to assert his rights thereto by a separate suit. The Judicial Committee of the Privy Council, although of opinion that, if the matter had been *res integra*, the provisions of the section might have admitted of a different interpretation, being unwilling to run counter to a long and concurrent course of decisions of the Indian Courts in what is really a mere matter of procedure, accepted this construction of the law as binding. The plaintiff obtained a decree for the possession of certain lands, with mesne profits up to the date of suit. No claim was made in the plaint for mesne profits accruing due after the date of suit, and the decree was silent in respect thereof. An appeal against the decree having been brought by the defendant, execution was, from time to time, stayed by the Court on the defendant giving security, to abide the event of the appeal, for the execution of the decree, and for payment of the mesne profits accruing, while the plaintiff remained out of possession. The decree having been confirmed on appeal, the plaintiff applied for execution in respect of the interim mesne profits. Held in the Court below, that, as these were not provided for by the decree, they could not, under s. 11, Act XXIII of 1861, be awarded in execution, but must be made the subject of a separate suit. Held by the Judicial Committee, that the proceedings whereby the defendant led the Court to stay execution and continue him in possession, laid him under an obligation to account in the suit for the mesne profits which he engaged to pay; and that this obligation was capable of being enforced by proceedings in execution, notwithstanding the construction given by the Court to s. 11; since even if the defendant's liability to account were not to be considered "a question relating to the execution of the decree," within the meaning of the section, he was, in any case, precluded by the ordinary principles of estoppel from contending that the mesne profits in question were not payable under the decree. **SADASIVA PILLAI v. RAMALINGA PILLAI,**
[iv P. C. 383

MESNE PROFITS, SUIT FOR.

See RES-JUDICATA.

SPECIAL APPEAL.

MILITARY AUTHORITIES, JURISDICTION OF.

See JURISDICTION OF CRIMINAL COURT.

MILITARY OFFICER.

See SERVICE OF SUMMONS.

SMALL CAUSE COURT, MOFUSSIL

MINISTERIAL OFFICER, ORDER OF MAGISTRATE DISMISSING.*See* APPEAL.**MINOR.***See* ACT XL OF 1858.

GUARDIAN.

HINDU LAW, PARTITION.

SUCCESSION ACT, ss. 2 & 3.

2. — *Sale in execution of decree—Usufructuary mortgage—Right of purchaser.*] The acts of a minor are only voidable, and not absolutely void. The purchaser of the right, title, and interest of a judgment-debtor sued to obtain immediate possession of the property purchased at a sale held in execution of a decree, after setting aside an usufructuary mortgage executed by the judgment-debtor while a minor. *Held*, that the sale in execution merely transferred to the purchaser the reversionary right of the judgment-debtor in the property, after the satisfaction of the usufructuary mortgage, and not the right to set aside an act done during minority. *Held* that, until a transaction by a minor was avoided by some distinct act on attaining majority, it must be considered valid. *HARI RAM v. JITAN RAM*, [iii A. C. 426]

3. — *Act XL of 1858, s. 3—Suit of small value.*] A suit can be prosecuted or defended by a relative on behalf of a minor without a certificate under Act XL of 1858 when the subject-matter of the suit is of small value. A suit to recover real and personal property of the value of Rs. 7,260 was allowed to be prosecuted by the brother of a minor on behalf of himself and his minor brother, under Act XL of 1858, s. 3. *NABADWIP CHANDRA SIKKAR v. KALINATH PAL* — — — [iii Ap. 130]

4. — *Application for custody of minor daughter—Act XL of 1858, s. 2—Principal Civil Court of original jurisdiction.*] An application was made to a Munsif for the custody of a minor daughter, which, on appeal to the Civil Judge, was dismissed. On appeal to the High Court, *held*, all the proceedings must be quashed. The application should have been made in the principal Civil Court of original jurisdiction in the district. *HARASUNDARI BAISTABI v. JAYADURGA BAISTABI* — — — [iv Ap. 36]

5. — *Custody of—Habeas Corpus, return to.*] A girl under 16 years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *habeas corpus* stated that a girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months), the Court *held*, that she was of years of discretion to choose for herself under whose protection she would remain. *QUEEN v. VAUGHAN; IN THE MATTER OF GANESH SUNDARI DEBI* — — — [v 418]

IN THE MATTER OF KHATIJA BIBI — — — [v 557]

6. — *Sale by guardian—Suit on majority to set aside sale—Refund of sale-proceeds.*] The plaintiff on coming of age sued to set aside a

MINOR—continued.

sale of his ancestral property which had been made by his guardian during minority. No legal necessity was proved, but it appeared that he had had the benefit of the sale proceeds. A decree was passed in his favour, but subject to the condition that he should first refund the proceeds of sale. *PARAN CHANDRA PAL v. KABUNAMAYI DAS* — — — [vii 90]

7. — *Suit by minor—Next friend.*] Plaintiff being a minor his suit was not dismissed, but he was directed to appoint a next friend to sue for him. *ROLLO v. SMITH* — — — [10 C. 10]

8. — *Parties—Guardian—Act XL of 1858, s. 3—Declaratory decree.*] In a suit to set aside "the allegation of the defendant that her son S. had been adopted by the father of the plaintiff, and had therefore inherited his property," the defendant was described in the plaint, as *M.* the mother of *S.*; and subsequently the words "*a minor*" were inserted after the name of *S.* In the proceedings in the suit, the defendant designated herself as mother and guardian of *S.*, a minor, but there was nothing to show she had obtained a certificate of guardianship, or had been appointed guardian *ad litem*. The two lower Courts gave a decree for the plaintiff. On special appeal to the High Court it was contended that *S.* ought to be a party to the suit. *Held*, that the suit as it stood could not be treated as a suit against the minor: the minor ought himself to have been made and been described as defendant, some other person being named as guardian. If treated as a suit against *M.* only, it was wrongly brought, no suit to make any declaration as to the adoption could be brought against any other than *S.* himself. *MONGOLA DOSSEE v. SARODA DOSSEE*, [xii Ap. 2]

MINOR, CUSTODY OF.*See* HABEAS CORPUS.**MINOR, OBTAINING POSSESSION OF, FOR PURPOSE OF PROSTITUTION.***See* PENAL CODE, ss. 372, 373.**MINOR, PURCHASER FROM.***See* LIMITATION ACT IX OF 1871, s. 7.**MINORITY, DISABILITY OF.***See* LIMITATION ACT XXV OF 1857.

LIMITATION ACT IX OF 1859.

LIMITATION ACT XIV OF 1859, s. 11.

LIMITATION ACT IX OF 1871, s. 7.

MISAPPROPRIATION OF PROPERTY OF DECEASED.*See* CERTIFICATE OF ADMINISTRATION.

MISCHIEF—Penal Code, s. 425—Wrongful loss—Proof of title.] The right to a fishery was in dispute between the zemindar of Bally and the zemindar of Moharajpore. The former obtained a decree in the Civil Court declaring the fishery to be his, in proceedings to which the latter was not a party, and the servants of the Bally zemindar thereupon removed a bamboo bar, which the Moharajpore people had erected to prevent the passage of fish. For this they were convicted of mischief under the Indian Penal

MISCHIEF—continued.

Code, and punished by fine. *Held*, on reference to the High Court, that the conviction could not stand, as the Moharajpore zemindar had not shown that he was legally entitled to the fishery, and as it did not appear that the defendants were acting otherwise than from a *bond fide* belief that the Moharajpore zemindar was encroaching on their master's rights. **BARKAR HALSANA v. DINOBANDHU BISWAS**, [iii A. Cr. 17]

MISCHIEF BY FIRE.

See ATTEMPT TO COMMIT OFFENCE.

MISDIRECTION BY JUDGE.

See REVISION.

MISJOINDER.

See ADMINISTRATION, SUIT FOR.
CIVIL PROCEDURE CODE, s. 8.
MULTIFARIOUSNESS.
SLANDER.

MISPRISION OF TREASON.

See WAGING WAR AGAINST THE QUEEN.

MOFUSSIL COURTS, POWER OF.] Mofussil Courts have no power to make orders *in panam* against persons not parties to a suit such as is possessed by the Original Side of the High Court. **RAMNIDHY KOONDOO v. RAJAH OJODHYARAM KHAN** - - xi Ap. 37

MOKURARI ISTEMRARI.

See POTTA, CONSTRUCTION OF.

MOKURARI TITLE.

See PASSESSION.

MONEY-DECREE.

See EQUITY OF REDEMPTION.
EXECUTION OF DECREE.
MORTGAGE.

MONEY HAD AND RECEIVED.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 16.

2. — *Payment into Court by mortgagees of amount of decree to prevent sale of mortgaged property—Voluntary payment.]* The defendant sued one *J. H. P.* in the Small Cause Court, and obtained a decree, in execution of which he caused a steamer to be attached as being the property of *J. H. P.* Thereupon the plaintiffs, alleging themselves to be in possession of the steamer as mortgagees from *J. H. P.*, in order to obtain its release, paid the amount of the decree against *J. H. P.* into Court, and the steamer was given up. Subsequently an order was made by the Court, on the application of the plaintiffs, that the money should remain in Court pending the result of a suit to be brought by them for its recovery. They, accordingly, brought a suit against the defendant. The Judge of the Small Cause Court found that *J. H. P.* had no attachable interest in the steamer, and that the plaintiffs had paid the amount of the decree on compulsion. *Held*, the plaintiffs could maintain the suit, although the defendant had not actually received the amount of the decree. **MORAN v. DEWAN ALI SIRANG** viii 418

MONEY PAID IN EXECUTION OF DECREE, SUIT TO RECOVER.

See ACT XXIII OF 1861, s. 11.

MONEY PAID TO SIEDAR AS WAGES OF COOLIES.

See ATTACHMENT.

MONEY PAID TO STAY FORECLOSURE, SUIT FOR.

See ATTACHMENT.

MONEY PAYABLE BY INSTALMENTS.

See ATTACHMENT.

BOND.

CIVIL PROCEDURE CODE, s. 206.

LIMITATION ACT XIV OF 1859, s. 1, CL. 10, s. 20.

MONEY PAYABLE ON DEMAND.

See HINDU LAW, CONTRACT.

MOOKHTEAR—Act XX of 1865, ss. 11 and 13—Practising without certificate.] The writing a petition for a party who presents it in Court is not acting as a mookhtear within the meaning of s. 11, Act XX of 1865; and the writer is not liable to punishment under s. 13 for practising as a mookhtear without a certificate. **IN RE KALI CHARAN CHUND** - - - ix Ap. 18

2. — *Act XX of 1865, s. 16—Suspension from practice.]* Before making an order suspending a mookhtear from practising, the requirements of s. 16, Act XX of 1865, should be complied with by the Magistrate. **IN THE MATTER OF THE PETITION OF GHOLAB KHAN**, [vi Ap. 83]

3. — The High Court has power, under s. 15, Act XX of 1865, to suspend or dismiss a mookhtear from his office, when it sees "reasonable cause," although he may not have committed any act of "professional misconduct" under s. 16. **IN THE MATTER OF THE PETITION OF GHOLAB KHAN** - - - vii 179

MOOKHTEAR, ADMISSION OF TITLE BY.

See PRINCIPAL AND AGENT.

MOOKHTEAR AND CLIENT.

See PRIVILEGED COMMUNICATION.

MOOKHTEAR, GIVING COMMISSION TO.

See PLEADER.

MORTGAGE.

See EXECUTION OF DECREE.

LIMITATION ACT XIV OF 1859, s. 1, CL. 12.

MAHOMEDAN LAW, ENDOWMENT.
MAHOMEDAN LAW, PRE-EMP-
TION.

MERGER.

ONUS PROBANDI.

2. — *Agreement not to alienate—Form of mortgage.]* By an agreement reciting that *A.* had executed a bond in favour of *B.* for a certain sum of money, *A.*, "in order to repay the bond-money in the terms in the bond contained," declared that, "until the repayment of the money covered by the bond, he would not, from the date of the agreement, convey the property

MORTGAGE—continued.

mentioned therein to any one by deed of sale, or deed of conditional sale, or mokurari patta, or deed of mortgage, or zur-i-peshgi tioca patta. Should he make any of these transactions in respect of the said lands, the instrument relating thereto shall be deemed invalid, and as executed in favour of nominal parties for evading payment of the money covered by the said lands." *Held* (MARKBY, J., doubting), that the instrument operated as a mortgage to A. of the lands comprised therein. No precise form is required to create a mortgage. **RAJ KUMAR RAMGOPAL NARAYAN SINGH v. RAM DUTT CHOWDEY** - - - v F. B. 264

3 — *Deed, construction of—Bai-bil-wafa—Foreclosure in the Central Provinces.*] By a bond dated 10th February, 1857, a certain village was mortgaged by one G. to the appellants and their father as security for a loan; the bond providing that, "if I fail to pay the money as stipulated, I and my heirs shall, without objection, cause the settlement of the said village to be made with you." The interest of G. in the village was described as that of a *malguzar*, and his proprietary right therein was declared by the Revenue Authorities shortly after the execution of the mortgage, but his payments of revenue being in arrear, the Board of Revenue granted a lease of the village for ten years to the appellants' father. The mortgagees in a suit on the bond obtained the following decree on 3rd November, 1860:—"As the defendant acknowledges the plaintiffs' claim, it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property." In proceedings in the Civil Court taken under this decree, the mortgagees asked for possession of the village, and obtained, on 17th July, 1862, an order, in pursuance of which they were put in possession, an appeal by G. being rejected. G. took various steps to recover possession of the mortgaged property, or a declaration of his proprietary interest therein, but failed in his endeavours, an application for a grant of the proprietary right in the village, and an appeal from an order cancelling his patta, being rejected by the Revenue Authorities on 8th December, 1864, and 27th July, 1865, respectively; and on 12th August, 1867, G. conveyed the village by deed of sale to the respondents. In a suit brought by them to redeem the mortgage and obtain possession of the property,—*held*, that the effect of the bond was to create a simple mortgage, and not a conditional deed of sale; and that the proceedings taken under the decree of 3rd November, 1860, and the order made therein of 17th July, 1862, by virtue of which the mortgagees obtained possession of the mortgaged property, did not operate so as to extinguish the right of redemption. The rule that a *bai-bil-wafa* does not become absolute upon breach of the condition as to payment, without proceedings for foreclosure, obtains in the Central Provinces of India. **GOKUL DOSS v. KRIPARAM** - - - - - xiii P. C. 205

4. — *Construction of mortgage deed.*] The following terms in a deed—"that, for the

MORTGAGE—continued.

security of the payment of this debt, the lands mentioned in this deed are pledged by me; and that, until the principal money and the interest recited in this deed are paid off, I will not on any account transfer the property pledged to anybody by sale or *hibabillamas*, or gift or mortgage in any other way"—were held to amount to a mortgage. **LALA RAMDHARI LAL v. JANESSAR DAS** - - - - - vi Ap. 14

5. — *Agreement in petition creating a lien—Money-decree.*] Where a suit was brought on a petition which the plaintiff contended created a mortgage lien on certain property, the Court found the document was executed by the mortgagor with the consent of the mortgagee, and contained a clause by which the property was distinctly hypothecated to the plaintiff as a collateral security for the debt which the mortgagor had contracted. *Held*, that the petition was a valid agreement between the parties creating a mortgage in favour of the plaintiff. Although a mortgagee has obtained a money-decree, he can bring a regular suit to enforce his mortgage lien. **DUMA SAHU v. JEONARAYAN LAL** - - - - - iv A. C. 27 note

6. — *Money-decree.*] The taking a money-decree on a specially registered mortgage-bond under s. 53, Act XX of 1866, does not extinguish the mortgagee's lien on the property mortgaged by the bond. There is no substantial difference between the effect of an ordinary money-decree on the bond and a decree on the bond for sale of the mortgaged property, so that the remedy of the mortgagee is the same, so far as the parties to the suit are concerned, whether the decree be made under s. 53 or in a regular suit. Where the property mortgaged has passed into the hands of third parties, there is nothing in the fact that the mortgagee had obtained a decree on the bond to prevent him from bringing a separate suit against the transferees. **EMAM MONTAZOODDERN MAHOMED v. RAJCOOMAR DAS; HARANCHUNDER GHOSE v. DINOBUNDHOO BOSE** - xiv F. B. 408

7. — *Effect of assignment of judgment-debt—Sale of property on which there is a lien—Civil Procedure Code, s. 270.*] A simple decree for money upon a bond by which immoveable property is mortgaged, carries with it a lien upon the property mortgaged, and that lien continues as an incident to the debt when it passes from a contract-debt into a judgment-debt, and it continues when such judgment-debt is subsequently assigned to a purchaser. An attachment under a money-decree on a mortgage bond and a mortgage lien cannot co-exist separately in the property hypothecated, and such an attachment must be treated when existing as an attachment for enforcing the lien. And if property subject to such lien is sold in execution of a decree while it is under attachment under the decree upon the mortgage bond, the lien existing upon the property is transferred from the property to the purchase-money, and thereupon the property becomes thenceforth discharged from the lien. If after the rejection of a claim preferred by

MORTGAGE—continued.

the mortgagee, or person claiming the lien, no regular suit is brought under s. 270 of Act VIII of 1859 to enforce the lien, that lien is lost, and the decree becomes thenceforth a mere money-decree discharged from any incidental lien. **NADIR HOSSEIN v. PEAROO THO-VILDARINEE** - - - xiv 425 note

8. — *Money-decree.* A mortgagee who obtains a simple money-decree upon a bond by which property is mortgaged to him as a collateral security, does not retain his lien on the property mortgaged after it has passed into the hands of third persons. **SAWRUTH SING v. BHEENUCK SAHOO** - - - xiv 422 note

9. — *Suit to enforce a lien on land—Sale of mortgaged premises—Money-decree.* A suit to enforce a lien on land which has been mortgaged will lie, and the land as it stood at the time of the mortgage free from subsequent encumbrances may be sold, although a decree for money due upon the mortgage has been obtained, and the right, title, and interest of the mortgagor thereto has under such decree been once sold. **BISWANATH MUKHOPADHYA v. GOSSAIN DASS BARAMADAK** - - - iii Ap. 140

10. — *A. executed a bond in favour of B., hypothecating certain immovable property. B. recovered a money-decree against A. and caused the mortgaged property to be sold. B. became the purchaser at the sale in execution, and was put in possession. C., who held possession of the property under a decree for foreclosure of a subsequent mortgage of the same property to him by A., brought a suit against B. for recovery of possession, and obtained a decree. B. then brought a suit against C. to enforce his lien under the mortgage bond, but it was held that the suit was not maintainable.* **KASIMANNISSA BIBI v. HURANNISSA BIBI** - - - vii Ap. 8

11. — *Suit for money-decree on mortgage.* The plaintiff sued to recover a sum of money, with interest, on a mortgage deed, which contained the following clause: "If, by sale of the above land, the money receivable by you be not satisfied with charges, then you will realize the proper amount by selling my other landed properties, to which I will make no objection or excuse." The plaintiff asked for a simple money-decree. The defendant had other landed property besides the property mortgaged. *Held*, that the plaintiff was entitled to a simple money-decree available against his moveable property only. **JOGESWAR DUTT v. NITACHUND CHUCKERBUTTY**, [iv Ap. 48]

12. — An application was made for leave to file a suit brought to recover the sum of Rs. 2,300 on a Bengali deed of mortgage, containing a provision that, "if I should fail within the term of six months to pay off the whole of your money with interest, in that case you will have recourse to law, and by sale of the said huts, recover with interest the whole of your money. Should the whole of your money be not thereby realized, in that case you

MORTGAGE—continued.

will get it by sale of whatever other property I may have elsewhere. Should even then all the money be not realized, I shall in that case be held responsible for the remainder, that is to say, I shall myself pay: if I should make any objection it shall be false and inadmissible." The plaintiff asked for a money-decree, **PHEAR, J.**, refused to admit the plaintiff. **UMASUNDARI DAS v. UMACHARAN SADKHAH**, [vi Ap. 117]

13. — *Lien — Priority — Money-decree.* The plaintiff had lent money to a Court Ameen, who mortgaged, as security for the repayment of the amount, certain fees due to him then in deposit, and certain fees which might hereafter be deposited on his account. Those fees were subsequently attached by the defendant who had obtained a decree for rent against the Ameen. After that the plaintiff obtained a simple money-decree against the Ameen, and applied, in execution of his decree, to have the fees paid out to him, but his application was refused on the ground of the defendant's attachment. In a suit to recover the sums in deposit, and to have it declared that the plaintiff's lien on them was prior to that of the defendant, *held*, that the plaintiff's mortgage gave him priority, and that he was not barred from bringing the present suit by his having already sued to recover the amount, and obtained a mere money-decree. **LALA TILAKDHARI LAL v. FURLONG** - - - ii A. C. 230

14. — *Attachment — Lien — Priority — Fraud.* The plaintiffs advanced a sum of money on the security of a simple mortgage of a share in four talooks, and obtained a simple money-decree. They then caused the mortgaged premises to be attached, but did not proceed to sale. Afterwards they negotiated a loan to the judgment-debtors from a third party, the present appellant, upon a simple mortgage of one of the same talooks, concealing the existence of their prior lien, and appropriated the money so obtained in discharge of other debts due to themselves from their judgment-debtors. The appellant obtained a simple money-decree, and caused the premises to be attached and sold. Before the sale the plaintiffs gave notice of their lien, and in consequence the appellant purchased for a trifle. The plaintiffs brought the present suit for a declaration of their prior lien, and for a re-sale of the premises in satisfaction of their mortgage. The appellant contended in his defence that, as fraud was perpetrated by the plaintiffs in inducing him to make the loan without disclosing their prior lien, his mortgage should have priority over theirs. *Held*, that the appellant must be considered as having the first incumbrance; that the notice of the plaintiffs' mortgage given at the execution sale could only affect the appellant's title as purchaser. Priority as between the appellant and the plaintiffs in respect of incumbrances already existing could not be affected by such notice. **BHARAT LAL BHAGAT v. GOPAL-SARAN LAL BHAGAT** - - - iii A. C. 1

MORTGAGE—continued.

15. — *A. executed in favour of B. a simple mortgage of certain property. He afterwards executed in favour of C. a mortgage by bil-bil-wafa, or conditional sale, of the same property. C. obtained a decree for foreclosure, and got possession thereunder. B. then obtained a money-decree against A., and in execution seized and sold and became the purchaser of the said property, and was put into possession of it. On C. suing B. to recover possession, B. claimed to be entitled to hold the property by reason of the prior lien which he had under the simple mortgage. Held, that as B. had only got a money-decree and no declaration of his rights as mortgagee, he could not set up a prior lien against C.* *KASIMAN-NISSA BIBI v. HURANNISSA BIBI* - ii Ap. 6

16. — *Purchase by mortgagee.] K. D., a Hindu widow, by deed, appointed R. S. to be her general mooktear, for the conduct of certain suits in her name, which were pending in respect of the estate of her deceased husband. By this deed, dated September 25th, 1858, she covenanted to repay him, within two months of the successful termination of the suits, "all moneys properly disbursed by him on her account, &c.," and also to pay him an additional sum as remuneration to himself. R. S. entered on the conduct of her business, and advanced certain moneys on her account; and in October, 1859, K. D. executed in his favour a second deed, by which she mortgaged to him her share in the estate of R. H., deceased, which was in the hands of his executors, "and my decrees, 24 and 25, in the Zilla Court, and the decree in the Supreme Court, and the right and interest of all the said decrees and all other real and personal properties belonging to the said estate." By a decree of the High Court of 28th July, 1862, in one of the suits brought by K. D., the estate of R. H. was declared to consist of a share of a certain talook, of a share of a house in Calcutta, and of a certain sum of money; and K. D. was declared to be entitled to one moiety thereof. K. D. afterwards obtained an order for possession, and held possession of the said talook until August, 1866. R. S. continued the conduct of K. D.'s business, and advanced more money on her account, in respect of which, on May 31st, 1865, he brought a suit against her; and on September 21st, 1865, obtained a decree in his favour. Under this decree he attached the right, title, and interest of K. D. in the estate of R. H.; and on 25th June, 1866, it was put up for sale, and purchased by R. S. himself. In a suit brought by K. D. against R. S. among other things for an account held, that R. S. was a trustee for K. D., in respect of her share in the estate of R. H., which he had purchased in execution of his decree. *KAMINI DEBI v. RAMLOCHAN SIKKAR* - v 450*

17. — *Execution of decree—Subsequent purchaser—Money-decree.]* When a person to whom property is pledged for a debt obtains a simple money-decree against his debtor in respect of the debt, he cannot execute that

MORTGAGE—continued.

decree against the property pledged, where it is in the possession of a subsequent *bond fide* purchaser. *GUPINATH SING v. SHEO SAHAY SING* - - - - - Sup. Vol. 72

18. — *Madras law of mortgage—Right of redemption—Reg. XVII of 1806.]* In a suit instituted in 1853 to redeem a mortgage containing a clause making it an absolute sale in default of redemption by a certain date, held, that in the Madras Presidency effect must be given to that clause, the Reg. XVII of 1806 not being applicable. *PATTABHIRAMIER v. VENKATABOW NAICKEN* - - - - - vii P. C. 136

19. — *Usufructuary mortgage—Suit for redemption on deposit of balance due.]* A. executed an ikrar by way of mortgage, whereby it was stipulated that B., the mortgagee, was to remain in possession of the mortgaged premises for a period of eight years; that the amount due was to be paid off from the usufruct; and that if at the expiry of that period any sum should remain due under the ikrar, A. was to pay the same. In a suit for redemption brought before the expiry of the period mentioned in the ikrar on deposit of the amount due thereunder,—held, that the suit would not lie. *CHANDRA KUMAR BANERJEE v. ISWAR CHUNDRA NEWGI* - - - - - vi 562

But see *Dindoyal Shah v. Ganesh Mahatma* (vi 562 note), which, however, was decided on the supposition that the mortgage was executed previously to Act XXVIII of 1855. *SURJAN CROWDERY v. IMABANDI BEGUM*.

[vi 562 note

20. — *Right to redeem by deposit of principal—Possession of mortgagee.]* On a question of the right of a mortgagor to redeem by deposit of the principal sum due only, the length of possession by the mortgagee is immaterial. *ABDULLA KHAN v. UPENDRA CHANDRA*,

[vi Ap. 53

21. — *Reg. I of 1798—Reg. XVII of 1806, s. 7—Redemption, right of.]* Where money was paid into Court by a person alleged to be a mortgagor of certain property after notice of foreclosure, without any actual restriction being placed on its being paid over to the alleged mortgagee, but the payment was made with a notice in these words: "I have shown the mortgage to be false and fraudulent, and to set aside the kobala and to get back the money I shall hereafter institute a regular suit;" it was held that Regs. I of 1798 and XVII of 1806, s. 7, did not apply to such a case. Such payment gave no right to redeem. *ABDOOL RAHMAN v. KISTOLALL GHOSE*,

[Sup. Vol. 598

22. — *Redemption, right of.]* A. granted a zur-i-peahgee lease of certain lands to the defendants for a fixed term of years, which was to continue after the expiry of the term so long as the money advanced remained unpaid. Shortly afterwards A. evicted the defendants, and sold the land to C. and D. in the proportion of twelve annas and four annas. The defen-

MORTGAGE—continued.

dants sued all the three, and obtained a decree for possession and mesne profits. They never got back possession, but recovered the mesne profits from A. On the expiry of the term of the lease, C. and D. each brought a suit to redeem his own share of the estate after payment into Court of the money advanced in amounts proportionate to the share of the land purchased by each. The two suits were heard together. *Held*, they were entitled to redeem. **WUZUR-ONNESSA v. BEBEE SAEEDUN; JOYMUNGUL SINGH v. BEBEE SAEEDUN** — Sup. Vol. 613

23. — *Redemption of a portion of mortgaged property—Purchase of portion of equity of redemption by mortgagee.* R. mortgaged to N. certain property, of which N. caused a moiety to be sold in execution of a money-decree against R., and himself became the purchaser. The moiety was sold subject to N.'s mortgage in satisfaction of another decree, and purchased by L. N., in exercise of his rights as mortgagee, attached and proceeded to sell the share of L. in the portion purchased by him, and L. thereupon, with a view to stay the sale, deposited an amount proportionate to the share held by him. The sale, however, was allowed to proceed. *Held*, in a suit brought by L. against N. to set aside the sale, he was entitled to a decree. **NATHOO SAHOO v. LALAH AMER CHAND** — — — — — xv 303

24. — *Purchase of equity of redemption—Principle of tacking—English law.* In 1840, A. mortgaged certain lands to B., which he had granted in patni at a rent of Rs. 145. Subsequently, in September, 1844, A. granted a fresh patni at a reduced rent of Rs. 90; and on the 9th October, 1844, A. mortgaged the same lands to C. In 1856, C. obtained a decree for the redemption of the mortgage to B., and he paid off the debt to B.: but it did not appear that he took an assignment of the mortgage for the purpose of keeping it on foot as a security against incumbrances created by A. subsequently to the date of that mortgage, and prior to that of the mortgage to himself; and in 1862, he obtained a final decree for foreclosure against A. In a suit by C. to set aside the lease of September, 1844,—*held*, that it was valid and binding upon him. *Semble*.—The English principle of tacking does not apply to mortgages of land in the mofussil. **GAUR NARAYAN MAZUMDAR v. BRAJA NATH KUNDU CHOWDREY** — — — — — v 463

25. — *Tacking—English law.* The English law of tacking is not recognized in the Courts of this country. **UDAYA CHANDRA RANA v. BHAJAHARI JANA** — — — — — ii Ap. 45

26. — *Foreclosure—Purchaser of share of mortgaged property.* A mortgagee sold part of the mortgaged property and then foreclosed, his purchaser being no party to the foreclosure proceedings. The mortgagee and purchaser afterwards sued for recovery of possession of the mortgaged property after foreclosure. *Held*, that the purchaser could maintain his suit, although he had not been a party to the

MORTGAGE—continued.

foreclosure proceedings for the recovery of the mortgaged property, which had been purchased by him. The foreclosure conferred an absolute title to the whole property mortgaged on the mortgagee and anybody claiming under him. **RAJ CHANDRA PODDER v. MANORAMA**,

[iii Ap. 143]

27. — *Deposit of mortgage debt — Reg. XVII of 1806, s. 7.* Under s. 7, Reg. XVII of 1806, if a mortgagee has obtained possession at any time before a final foreclosure of the mortgage, the mortgagor's payment or tender of the principal sum due under the mortgage debt saves his equity of redemption. *Held*, that the section applies where the mortgagee has obtained a decree for possession and wasilat, whether he executes it or not. **SAKRIMAN DICHUT v. DHARAM NATH TEWARI**,

[iii A. C. 141]

28. — *Reg. XVII of 1806, s. 7 — Foreclosure of equity of redemption—"Stipulated period."* By a mortgage in the English form, the defendants conveyed certain property to the plaintiff, subject to the proviso that, in the event of the defendants paying to the plaintiff the principal sum on the 4th September, 1868, and in the meantime paying interest on that sum half-yearly, with annual rests, in case of default of such payment, then the plaintiff should re-convey the property. The defendants failed to pay interest; and on the 4th December, 1866, the plaintiff applied to the Judge of Chittagong for foreclosure; thereupon notice, under s. 8 of Reg. XVII of 1806, was issued, and served on the defendants. On the 15th April, 1868, this suit was instituted by the plaintiff for the establishment and confirmation of absolute purchase, and to obtain possession of the mortgaged premises. *Held*, that the suit was not maintainable. Reg. XVII of 1806 applied to this mortgage; and, under that Regulation, the mortgagee could not apply for foreclosure until the time agreed upon for repayment by the mortgagor,—that is, the "stipulated period," referred to in s. 7,—and the mortgagor is entitled to one year's grace from notification of the application for foreclosure made after that date. **SARASIBALA DEBI v. NAND LAL SEN** — v 389

29. — *Foreclosure—Purchaser from mortgagor—Adverse possession.* Where a party *bond fide* purchased from another, as his own property, land in fact mortgaged, and obtained possession and mutation of names, his title was held to be adverse to that of the mortgagee. Foreclosure proceedings in the Supreme Court as to mofussil property, to which a purchaser from the mortgagor is not made a party, cannot affect that purchaser. **BRAJANATH KUNDU CHOWDREY v. KHILAT CHUNDEA GHOSE**,

[viii P. C. 104]

30. — The possession of a purchaser at a sale in execution of a decree without notice of a mortgage of the property is adverse to the mortgagee. **ANAND MAYI DAS v. DHARENDEA CHANDRA MOOKERJEE** — viii P. C. 123

MORTGAGE—continued.

31. — *Suit for foreclosure of property partly in Calcutta and partly in mofussil.* The High Court in a suit for foreclosure of property partly in Calcutta and partly in the mofussil has no power to follow the procedure prescribed by Reg. XVII of 1806, which relates to the foreclosure of property in the mofussil; but it is bound to see that the defendant is not, by reason of the suit being brought in the High Court, deprived of any substantial advantage which he would have had if the suit had been instituted in the mofussil Court. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. NUNDOLOLL SEN* - - - - - xi 301

32. — *Reg. XVII of 1806, s. 8—Legal representative—Assignee of mortgagor—Notice of foreclosure.* A purchaser of the rights and interests of the mortgagor is a legal representative within s. 8, Reg. XVII of 1806, and notice of application for foreclosure must be served on him. *GOLAM DUSTAGIR KHAN v. JOGAI SINGH* - - - - - i S. N. iii

33. — Under s. 8, Reg. XVII of 1806, a mortgagee is bound to serve notice of foreclosure upon the assignee of the mortgagor, whether such assignee be of the whole or a portion of the mortgaged premises, and whether or not notice of the assignment has been given to the mortgagee or not. *GANGA GOBIND MANDAL v. BANI MADHAB GHOSE*, [iii A. C. 172]

34. — The assignee of a mortgagor, though purchaser of only a portion of the mortgaged property, is his "legal representative," within the meaning of s. 8, Reg. XVII of 1806, and as such entitled to notice of foreclosure. *SHEO GOLAM SINGH v. RAMROOP SINGH*, [xv 34 note]

35. — *Purchaser from mortgagee.* Property in the mofussil which had been mortgaged in 1862 to C. by a deed in the English form containing the usual power of sale on default of payment, and again in 1864 to T. by deed of conditional sale, was sold by C. under the power of sale and purchased by N. Previously to the sale, T. had foreclosed. In a suit for possession of the property brought by the widow of T. against N. and the mortgagor, it appeared that no notice of foreclosure had been served on N. Held, that N. was entitled to such notice by the fact of his purchase, whether he had obtained possession or not, and that no notice having been served upon him, the suit was not maintainable against him. *BHANOOMUTTY CHOWDBAIN v. PREMCHAND NEOGEE* - - - - - xv 28

36. — *Notice of foreclosure—Allowance of time by mortgagee beyond year of grace.* A mortgagee having issued notice of foreclosure on the mortgagor, allowed him six months' time in which to redeem, shortly before the expiry of the year of grace. The mortgagor died, and the mortgagee sued to recover the property. Held, that fresh notice of foreclosure on the legal representative of the mortgagor was not necessary, the requirements of the law in the

MORTGAGE—continued.

issue of the notice and the expiry of the year of grace having been complied with. *BAZLOOR RAHIM v. ABDULLAH* - - - - - ii S. N. v

37. — *Service of notice—Sufficiency of.* Where notice of foreclosure was shown to have been served according to the usual course of business in the Sheriff's office, the Court presumed that a copy of the application had been duly served therewith; but where it appeared that, according to the practice of the High Court, mention of the application would have been made in the order if it had accompanied the notice, and no such mention was made, the Court refused to make such presumption. *DENONATH GANGOOLY v. NURSING PROSHAD DASS* - - - - - xiv 67

38. — *Accounts—Interest—Reg. XV of 1793, s. 10—Suit for redemption.* Where a mortgage deed stipulates for interest at 9 per cent., but other and collateral deeds, forming part of the same transaction, provide for further profits to the mortgagee,—held, that the mortgagor cannot, unless there be a positive legal enactment to that effect, be heard to plead that the written engagement, though not extending to the whole profit stipulated, must be adhered to as against the mortgagee, though the mortgagor may go beyond it to show the full extent of the profit, and so to be relieved from the consequences of his actual contract. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent., the maximum allowed by s. 10 of the Reg. XV of 1793. In a suit for redemption, on the ground that the debt has been satisfied with interest, the onus is on the plaintiff. A mortgagee is not an assurer of the continuation of the same rate of profit as his mortgagor was able to raise. Hence an estimate of the rental preceding the mortgagor's possession is not sufficient proof of the profits in his time. The nature of the accounts which a mortgagor may call for from the mortgagee, explained. The mortgagee need not personally attest the accounts, if he has no personal knowledge of them. Presumptions against mortgagees for non-productions of accounts must have reasonable limits, and not be mere conjectures or based on inexact data. *SHAH MAKHANLAL v. SRIKRISHNA SING*, [ii P. C. 44]

39. — *Mortgages in possession—Mode of taking accounts—Interest—Reg. XV of 1793.* In taking the accounts as between a mortgagor and a mortgagee in possession, the interest may be set off from time to time against the rents and profits, the mortgagee only accounting to the mortgagor for any rents, profits, and interest on the same which he may have received over and above the interest due to him upon the debt. *RADHABENODE MISSEER v. KRIPAMOYEE DABEE*, [x P. C. 386]

MORTGAGE BY HINDU PURDAH LADY.

See EVIDENCE.

PAROL EVIDENCE.

MORTGAGE BY MEMBER OF JOINT HINDU FAMILY.

See HINDU LAW, JOINT FAMILY.
 LIMITATION ACT XIV OF 1859,
 s. 1, CL. 13, & s. 5.
 VENDOR AND PURCHASER.

MORTGAGE DEBT, APPORTIONMENT OF DECREE ACCORDING TO SHARE OF PROPERTY PURCHASED.

See CONTRIBUTION, SUIT FOR.

MORTGAGE, PROPERTY SOLD SUBJECT TO.

See CIVIL PROCEDURE CODE, s. 270.

MORTGAGE, SUIT BY PURCHASER TO RECOVER MONEY PAID ON.

See VENDOR AND PURCHASER.

MORTGAGED PROPERTY, SUIT BY MORTGAGEE AGAINST PURCHASER OF.

See LIMITATION ACT XIV OF 1859,
 s. 1, CL. 12.

MORTGAGED PROPERTY, SUIT BY MORTGAGOR FOR.

See LIMITATION ACT XIV OF 1859,
 s. 1, CL. 15.

MORTGAGEE IN POSSESSION.

See LIMITATION ACT XIV OF 1859,
 s. 2.

MORTGAGEE IN POSSESSION, SUIT FOR SURPLUS COLLECTION AGAINST.

See LIMITATION ACT XIV OF 1859,
 s. 1, CL. 16.

MORTGAGEE, SUIT BY, AGAINST MORTGAGOR AND PURCHASER OF MORTGAGED PROPERTY.

See DECREE.

MORTGAGOR AND MORTGAGEE.

See EQUITY OF REDEMPTION.
 PARTIES TO CONVEYANCE.

MORTMAIN, STATUTES OF.

See WILL.

MOTHER, POWER OF, TO BIND SONS.

See GUARDIAN.

MOTIONS, TAKING FURTHER EVIDENCE IN.

See PRACTICE.

MOVEABLE PROPERTY.

See SMALL CAUSE COURT, MOFUSSIL.
 SMALL CAUSE COURT, PRESIDENCY TOWNS.

MOVEABLE PROPERTY, EXECUTION OF WARRANT AGAINST.

See CIVIL PROCEDURE CODE, s. 233.

MULTIFARIOUSNESS.

See ADMINISTRATION, SUIT FOR.
 CIVIL PROCEDURE CODE, s. 7.

2. — *Joinder of different causes of action against different parties.*] Under five different pattas, A. granted to B. patni leases of five different mehals. The rents of the mehals falling into arrear, the mehals were sold on two different dates. A. purchased two of the mehals, C. purchased two of the mehals, and D. purchased one of the mehals. In a suit brought by B. against A., C., and D., to set aside the sales on the ground of irregularity,

MULTIFARIOUSNESS—continued.

held, the suit was bad for multifariousness, and must be dismissed. *IMBIT NATH JHA v. ROY DHUNPAT SING* — — — *ix* 241

3. — *Rejection of plaint.*] A plaint against several defendants for causes of action which have accrued against each of them separately, and in respect of which they are not jointly concerned, should be rejected. *RAJA RAM TEWARI v. LUCHMUN PRASAD*,
 [Sup. Vol. 731]

4. — A suit against five defendants, including claims of the most miscellaneous character against each defendant, was dismissed by the first Court on the ground of multifariousness. The Subordinate Judge, on appeal, held that plaintiff was in any case entitled to a decision on one of his claims; and further held that the suit was not multifarious. *Held* on special appeal, that the Court could not select one claim on which to proceed when plaintiff insisted on pressing all. *Held* further, that the plaint was multifarious; and the suit was properly dismissed by the first Court. *MANIRUDDEN AHMED v. RAM CHAND*,
 [ii A. C. 341]

5. — When a plaint discloses different causes of action against different parties, it is bad in law, and the suit is not maintainable. *SARAT SOONDERY DEBI v. SUBJUKANT ACHARJI CHOWDHRY* — — — *ii* Ap. 53

MULTIFARIOUSNESS, DISMISSAL OF SUIT FOR.

See RES-JUDICATA.

MUNICIPAL COMMISSIONERS, SUIT AGAINST, FOR LAND.

See BENG. ACT III OF 1864.
 RES-JUDICATA.

MUNSIFF, DISMISSAL OF.

See ENGLISH COMMITTEE.

MURDER.

See UNLAWFUL ASSEMBLY.

2. — *Death caused by snake-charmers—Culpable homicide.*] Certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite, three of these persons died. *Held*, that the offence was murder under clauses 2 and 3 of s. 300 of the Penal Code, unless it could be brought within the 5th exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder. *QUEEN v. PUNAI FATTAMA*,
 [iii A. Cr. 25]

3. — *Grave and sudden provocation—Culpable homicide.*] Culpable homicide not amounting to murder is when a man kills another being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder. *QUEEN v. YASIN SHEIKH* *iv* A. Cr. 6

MURDER—continued.

4. — *Culpable homicide.*] Culpable homicide and murder distinguished. *QUEEN v. GORACHAND GOPE* — — Sup. Vol. 443

5. — *Insanity.*—Unsoundness of mind as absolving a man from the consequences of death caused by him observed upon. *QUEEN v. NOBIN CHUNDER BANKERJEE* — xiii Ap. 30

MUTINY ACT, s. 99.

See SMALL CAUSE COURT, MOFUSSIL.

MUTUAL DEALINGS

See LIMITATION ACT XIV OF 1859, s. 8.

MUTWALLI, SUIT TO REMOVE.

See ACT XX OF 1863.

NADI BHARATI.

See ACCRETION.

"NATIVE STATE, OR PRINCE IN ALLIANCE."

See CIVIL PROCEDURE CODE, s. 177.

NAVIGABLE RIVER, RE-FORMATION IN.

See ACCRETION.

NAZIR, LIABILITY OF.—*Attachment of property in execution of decree—Failure to return property attached on satisfaction of decree—Beng. Act V of 1863, ss. 4 & 8.*] In a suit brought against the plaintiff in the Collector's Court for arrears of rent, a decree was obtained, and a warrant was issued for the attachment of certain moveable property belonging to the plaintiff. The warrant was addressed to the nazir of the Collector's Court, and was by him delivered to one of the registered peons of the Court for execution. The peon reported to the nazir that he had attached the property in question, and had placed it in charge of certain persons, whose receipt for it he produced and filed. Subsequently, the plaintiff paid the amount of the decree into Court, and an order was made releasing his property from the attachment. A peon was sent to restore the property to the plaintiff, but the persons in whose charge it was said to have been left alleged that they had never taken possession of the property, and the peon was unable to restore the property to the plaintiff. In a suit brought by the plaintiff against the nazir to recover the property or its value,—*held*, that the nazir was not liable, *Beng. Act V of 1863* having altered the relation which formerly existed between the nazir and the peons of the Revenue Courts, and put them in the position of paid servants of Government. *KALEE COOMAR CHATTERJEE v. SIDDHESUR MUNDUL*, [xi 256

NAZIR, MISAPPROPRIATION BY.

See SURETY.

NECESSITY FOR ALIENATION.

See HINDU LAW, ALIENATION.

HINDU LAW, ENDOWMENT.

ONUS PROBANDI.

NEGLIGENCE.

See BENG. ACT VI OF 1863.

BILL OF LADING.

LANDLORD AND TENANT.

RAILWAY COMPANY.

ZEMINDAR, DUTY OF.

NEW TRIAL.

See REVISION.

SMALL CAUSE COURT, MOFUSSIL.

SMALL CAUSE COURT, PRESIDENCY TOWNS.

NONACCEPTANCE.

See CONTRACT.

NONAPPEARANCE, DISMISSAL FOR.

See CIVIL PROCEDURE CODE, s. 217.

NONAPPEARANCE OF DEFENDANT.

See CIVIL PROCEDURE CODE, ss. 111 AND 119.

NONAPPEARANCE OF INSOLVENT.

See INSOLVENT ACT, s. 86.

NONAPPEARANCE OF PLAINTIFF.

See CIVIL PROCEDURE CODE, s. 110.

NONAPPEARANCE OF PROSECUTOR.

See COMPLAINT.

NONDELIVERY.

See BAILMENT.
CONTRACT.

NOTES OF EVIDENCE.

See HIGH COURTS' CRIMINAL PROCEDURE ACT.

NOTICE OF ABANDONMENT.

See INSURANCE.

NOTICE OF ACTION.

See BENG. ACT VI OF 1863, s. 226.

NOTICE OF DISHONOR.

See BILL OF EXCHANGE.
HINDU LAW, CONTRACT.
HUNDI.
MAHOMEDAN LAW, BILL OF EXCHANGE.

NOTICE OF ENHANCEMENT.

See ENHANCEMENT OF RENT.
KABULIAT, SUIT FOR.

NOTICE OF EXECUTION.

See EXECUTION OF DECREE.
LIMITATION ACT XIV OF 1859, s. 20.

NOTICE OF FORECLOSURE.

See MORTGAGE.

NOTICE OF FORECLOSURE, SERVICE OF.

See REG. XVII OF 1806, s. 8.

NOTICE OF PRIOR CHARGE.

See VENDOR AND PURCHASER.

NOTICE OF RELINQUISHMENT.

See BENG. ACT VIII OF 1869, s. 20.

NOTICE OF TITLE.

See VENDOR AND PURCHASER.

NOTICE TO QUIT.

See LANDLORD AND TENANT.

"NOW ON HER PASSAGE," MEANING OF.

See CHARTER-PARTY.

NUISANCE — *Public nuisance* — *Prescriptive right.*] No length of enjoyment can legalize a public nuisance. *THE MUNICIPAL COMMISSIONERS OF SUBURBS OF CALCUTTA v. MAHOMED ALI* — — — — — vii 499

NUISANCE—continued.

2. — *Criminal Procedure Code (Act XXV of 1861), s. 62—Act X of 1872, s. 518—Rival hâts — Power of Magistrate.* A Magistrate has power, under s. 62 of Act XXV of 1861, to prohibit a particular landholder from holding a hât on a particular spot on a particular day, at least for a temporary period, if he is satisfied upon reasonable grounds that the order is likely to prevent, or tends to prevent, a riot or an affray. IN THE MATTER OF THE PETITION OF BYKUNTRAM SHAHA ROY - x F. B. 434

3. — When two hâts or markets were held on the same day on adjacent pieces of land, and it was shown to lead to riots and affray, and annoyance to persons lawfully employed in their usual avocations that they should be so held, an order by the Magistrate, under s. 62 prohibiting the parties from holding the hâts on the same day, was held to be a proper order under s. 62, Act XXV of 1861. QUEEN v. KALIKA-PRASAD - - - v Ap. 82 note

4. — *Act XXV of 1861, s. 404—Judicial order—Power of revision by High Court.* An order of a Magistrate under s. 62, Criminal Procedure Code, e.g. prohibiting one of two rival proprietors of two different hâts from holding his hât on certain days of the week in order to prevent obstruction, annoyance, and injury, is not a judicial order; and is, therefore, not open to revision by the High Court under s. 404, Criminal Procedure Code. PHEAB, J. (dissenting.) QUEEN v. ABBAS ALI CHOWDERY - - - vi F. B. 74

5. — *Removal of nuisance—Power of Magistrate.* Under s. 62 of the Code of Criminal Procedure, a Magistrate has no power to issue an order *ex parte* to cut down trees on the representation of a party supported by the report of the police that the existence of the trees was a nuisance. QUEEN v. RAM CHANDRA MOOKERJEE - - - v 181

6. — *Prohibitory order—Procedure* Under s. 62 of the Code of Criminal Procedure, a Magistrate cannot pass a prohibitory order without having previously issued a rule to show cause why the order should not be passed. QUEEN v. RAI LACHMIPAT SINGH - v Ap. 81
In re KALIDAS BHATTACHARJEE, [v Ap. 82 note

7. — *Criminal Procedure Code (XXV of 1861), s. 62—Act X of 1872, s. 518—Power of Magistrate—Procedure—Report of police.* There is nothing in s. 62, Criminal Procedure Code, to justify a Magistrate in making an order under that section on the mere report of a police officer. QUEEN v. BHYRO DAYAL SINGH - - - iii A. Cr. 4

8. — *Trespass by cattle — Penal Code, s. 188.* A Magistrate issued an order warning owners of cattle to take proper care of them; and that in case of disobedience or neglect they would be punished according to law; and did punish them for disobedience under s. 188 of the Penal Code. Held, that the Magistrate was not competent, under s. 62 of the Code of Criminal Procedure, to pass such an order.

NUISANCE—continued.

The order contemplated under that section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal. The conviction under s. 188 of the Penal Code was therefore illegal. IN THE MATTER OF AMIRADDI - - - ii A. Cr. 45

9. — *Penal Code, s. 289.* An order by a Magistrate prohibiting the straying of cattle within certain local limits is not an order within the meaning of s. 62 of the Code of Criminal Procedure. There can be no conviction for disobedience of such order under s. 289 of the Penal Code. QUEEN v. MOZAFAR KHALIFA, [ix Ap. 86

10. — *Order to destroy tank.* The defendant had made a tank in the bed of a khal by throwing two bunds across it, and on complaint to the Magistrate, he, finding that the tank had been in existence only for about six years, passed an order under s. 62, Act XXV of 1861, directing the defendant to destroy the bunds, on the ground that they were an obstruction to the enjoyment of the river by the public in the rainy season; and that the bunds interfered with the drainage of the country and tended to the injury of the crops and of the inhabitants. The High Court held, that s. 62 did not authorize the passing of such an order. QUEEN v. GOLAM DARBESH - i S. N. xxvii

11. — *Criminal Procedure Code (Act XXV of 1861—Ch. XX, ss 308-315—Order of Magistrate), Judicial order—Procedure.* A proceeding under Chapter XX of the Criminal Procedure Code, if regular and such as the law prescribes, is a judicial proceeding; but a Magistrate does not act legally under it, if he does not first call on the person with whose property he proposes to interfere to appear and show cause. COLLECTOR OF HOOGHLY v. TARAK NATH MUKHOPADHYA - - - vii 499

12. — *Slaughter house.* The condition and the conduct of an old-established slaughter-house were proved to be, in fact, an offensive nuisance and dangerous to the health of the neighbours; but the evidence did not show it was in a worse condition than at any time since its establishment; the occupiers, when summoned, refused to ask for a jury under s. 310, Criminal Procedure Code. Held, the Magistrate was justified in suppressing the "trade or occupation" under s. 308. MUNICIPAL COMMISSIONERS OF THE SUBURBS OF CALCUTTA v. MAHOMED ALI - - - vii 499

13. — When a Magistrate, under s. 308, Criminal Procedure Code, has ordered the suppression of a trade or occupation as a nuisance and injurious to the health of the community, the High Court will not interfere, unless they find either that there was no reasonable evidence before the Magistrate of the trade being injurious to the health and comfort of the community, or that the cause shown was such as ought to have satisfied the Magistrate that his order for suppressing the trade was not reasonable and proper. The Court take the findings of act by the Magistrate to

NUISANCE—continued.

be correct, unless they see that there is not on the record any evidence to warrant such findings. **MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v. AMANAT ALI**, [vii 516

14. — *Criminal Procedure Code*, ss. 308, 404 — *Thoroughfare — Obstruction, removal of — Powers of Magistrate.*] Where, in a proceeding before a Magistrate under s. 308 of the Code of Criminal Procedure, for the removal of an obstruction from a thoroughfare, or public place, the accused appears and shows cause, it is the duty of the Magistrate to enquire whether there is a thoroughfare or public place, and whether there is an obstruction. If the Magistrate makes the enquiry upon evidence before him, he does not act without jurisdiction, or in excess of jurisdiction. The High Court cannot set aside his order except for an error in law, or an excess of jurisdiction. It is not a ground for interference that the Magistrate has come to an erroneous decision upon the evidence. **ANGELO v. CARGILL** — ix 417

15. — *Criminal Procedure Code (Act XXV of 1861)*, s. 308 — *Order made without recording evidence.*] Where the Magistrate, on the report of the Civil Surgeon of the district, passed an order under s. 308, Act XXV of 1861, that the defendants should appear and show cause why certain tanneries should not be removed as being a nuisance and injurious to health, and after the defendants had shown cause, the Magistrate went himself to the place and thereupon made his former order absolute, the High Court, on an objection that the order was not legal, it having been made without recording legal evidence, refused to interfere. **QUEEN v. ALA BUKSH** — — vii 482 note

16. — *Criminal Procedure Code (Act XXV of 1861)*, ss. 62 and 308 — *Order to prevent obstruction—Act X of 1872 ss. 518 and 521.*] When a case falls both under s. 62 and under s. 308 of the Criminal Procedure Code, the order of the Magistrate ought not to be absolute in the first instance. He should give the defendant an opportunity to show cause against the order. *Scmble.*—Whether a case comes under either of these two sections or under both, the order of the Magistrate ought to contain a clear statement of the facts upon the basis of which the Magistrate has made the order. **IN THE MATTER OF HARIMOHAN MALO** — — i A. Cr. 20

NUISANCE, LIABILITY FOR.

See RAILWAY COMPANY.

NUISANCE, SUIT FOR INJUNCTION TO RESTRAIN.

See RAILWAY COMPANY.

OATHS ACT (X OF 1873), ss. 5 and 13 — *Omission to take evidence on oath or affirmation.*] The word "omission" in s. 13 of Act X of 1873 includes any omission, and is not limited to accidental or negligent omissions. **JACKSON, J.** dissented. **QUEEN v. SEWA BHOGTA**, [xiv F. B. 294

OATHS ACT (X OF 1873), ss. 5 and 13—contd.

2. — S. 13 of Act X of 1873 does not render the evidence of a child of nine years of age inadmissible, if the evidence has been advisedly, and not by an omission, recorded without any oath or affirmation. **QUEEN v. ANUNTO CHUCKERBUTTY** — xiv 295 note

3. — *Competent witness.*] The accused was charged with throwing *B.* and *C.* down a well. She was charged with the murder of *B.* under s. 302 of the Penal Code, and on that charge she was tried and acquitted. Thereupon the Joint Magistrate, without holding any further preliminary enquiry, committed her on a charge under s. 307, of attempting to murder *C.* The only eye-witness of the offence according to the Sessions Judge, was a child, and as she did not understand the nature of an oath or solemn affirmation, her evidence was taken on simple affirmation. The jury found the prisoner guilty and she was sentenced to ten years' transportation. *Held*, that the omission to administer either an oath or solemn affirmation, although knowingly made, did not render the child's evidence inadmissible. **QUEEN v. ITWARYA** — xiv 54

OBJECTION TAKEN FOR THE FIRST TIME ON APPEAL.

See APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME IN JURISDICTION.

PRIVY COUNCIL, PRACTICE OF.

OBSTRUCTING NAVIGATION—Beng. Act V of 1864.] To render a person liable to punishment under s. 16, Beng. Act V of 1864, for obstructing the line of navigation of a Government canal, it must be shown that he wilfully obstructed the navigation. **QUEEN v. KABIL MANJI** — — — — ii A. C. 23

OBSTRUCTING ROAD, SUIT FOR.

See JURISDICTION OF CIVIL COURT.

POSSESSION, ORDER OF CRIMINAL COURT AS TO.

OBSTRUCTION, REMOVAL OF.

See NUISANCE.

OCCUPIERS AND OWNERS, FINE IMPOSED ON.

See BENG. ACT III OF 1864, s. 67.

OFFENCE COMMITTED DURING JUDICIAL PROCEEDINGS.

See CRIMINAL PROCEDURE CODE (X OF 1872), ss. 435 and 436.

OFFENCE COMMITTED ON THE HIGH SEAS—Punishment — Procedure — European British subject—7 Will. IV, and 1 Vict., c. 85, s. 2—14 and 15 Vict., c. 19, s. 5—Jurisdiction—Act XIII of 1835.] In prosecuting a British subject for an offence committed on a board British ship upon the high seas,—*held* (1) (*dubitante* **PHEAR, J.**) that he must be charged with an offence under English law; (2) that the punishment must be according to English law; (3) that the trial must be according to the procedure of the local Court. Therefore, where a British subject was charged before the High Court with having committed an offence under 7 Will. IV., and 1 Vict., c. 85, s. 2, on

OFFENCE COMMITTED ON THE HIGH SEAS—
continued.

board a British ship, upon the high seas, within the admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vict., c. 19, s. 5,—*held*, that the conviction was good, and that the prisoner would be rightly punished with rigorous imprisonment, which is defined by s. 53 of the Indian Penal Code to be equivalent to imprisonment with hard labor, and that the trial had been rightly proceeded with under Act XIII of 1865. **QUEEN v. THOMPSON** — — — 10 Cr. 1

OFFENCE, SPECIFICATION OF.

See WARRANT OF ARREST.

OFFER MADE WITHOUT PREJUDICE.

See WRITTEN STATEMENT.

OFFICER ACTING IN TWO CAPACITIES.

See JURISDICTION OF CRIMINAL COURT.

OFFICIAL ASSIGNEE, PRIORITY OF.

See INSOLVENCY.

INSOLVENT ACT.

OFFICIAL LETTERS.

See EVIDENCE, CRIMINAL CASES.

OMISSION TO TRY MATERIAL ISSUE.

See REVIEW.

ONUS PROBANDI.

See ACT X OF 1859, s. 28.

BENAMI PURCHASE.

BILL OF LADING.

CHAMPERTY.

ESCHEAT.

HINDU LAW, JOINT FAMILY.

LANDLORD AND TENANT.

LIMITATION ACT X OF 1859.

LIMITATION ACT XIV OF 1859,
s. 1, CL. 12; CL. 13.

MALICIOUS PROSECUTION.

PARDANASHIN WOMEN.

PENAL CODE, s. 498.

2. — Civil Procedure Code, s. 246—Claim.]

The plaintiff sued to establish his right to a decree, of which he stated he was the assignee, and which he alleged the defendant had seized and sought to sell as the property of the plaintiff's assignee. The defendant admitted the assignment, but alleged that it was a fraudulent transaction. *Held*, the onus was on him to prove that the transaction was not a *bona fide* one. **LALBEHARI DUTT v. SRINATH MOOKERJEE** — — — iii A. C. 78 note

3. — Civil Procedure Code, s. 246—Claim—Deed of sale.]

A decree-holder caused the right, title, and interest of his debtor in certain land to be attached in execution. A claim was preferred under s. 246, Act VIII of 1859, by a previous purchaser, but was rejected. In a suit thereupon instituted for confirmation of possession on reversal of the order, the defence was that the purchase was benami. *Held*, the onus was on the plaintiff to make out his case. **MAHIMA CHANDRA KUNDU v. NURUDDIN**, [iii A. C. 70

4. — In a suit brought to establish the plaintiff's right to certain property after an

ONUS PROBANDI—continued.

order against him under s. 246, Act VIII of 1859, the defendant admitted that the property had been in the possession of the person against whom the plaintiff had obtained his decree, but stated that it had passed to him by conveyance executed by that judgment-debtor in his favor: the plaintiff alleged that this deed of sale was fraudulent and void. *Held*, the onus was on the plaintiff to show that the deed was not *bona fide*, and not on the defendant to prove the actual execution of the deed. **LALA RUDRA PRASAD v. BINODE RAM SEN**, [iii A. C. 71 note

5. — *Claim—Attachment—Civil Procedure Code, s. 246.*] Where a claim was made under s. 246 of Act VIII of 1859, by a third party, to some timber, which had been attached by a prohibitory order under s. 234,—*held per* PEACOCK, C. J., L. S. JACKSON, PHEAR, and MACPHERSON, JJ. (MITTER, J., dissenting) the claimant must begin. The onus is on him to prove that the goods attached were his property, or in his possession, and therefore not in the possession of the judgment-debtor. His evidence must be confined to proving his own claim, and he cannot be allowed to show a title in a third person with whom he has no connection. *Held (per* MITTER, J.) that, on the proper construction of the words "proceed to investigate the same with like powers as if the claimant had been originally made a defendant" the onus of proof as against the claimant is on the decree-holder. **NITO KALI DEBI v. KRIPANATH ROY** (viii W. R. 358) overruled. **NGA THA YAH v. BURN** — — — ii F. B. 91

6. — *Suit for declaration of Title—Civil Procedure Code, s. 246—Equitable right.*] Certain property belonging to one S. was mortgaged by him in 1810 and 1813 to O., under form of conditional sale. S. had three sons, H., A., and N., and in 1819 he sold the property included in the mortgages of 1810 and 1813 to his sons, H. and A. In 1820 H. and A. entered into a fresh arrangement with O., who accepted from them a fresh mortgage of the property in lieu of those of 1810 and 1813, and of this mortgage in 1831 he obtained a decree for foreclosure. Subsequently, the Government resumed the property and settled it with O.'s widow as representing the proprietor, and the plaintiff afterwards purchased a one-third share of the estate. The defendant was the holder of a decree obtained in 1836 against the heirs of S. on a money debt of S., and in execution of that decree he, in 1866, caused the rights of N. in the property to be attached and sold, and himself became the purchaser. On attachment, the plaintiff preferred a claim to it under s. 246, Act VIII of 1859, but it was disallowed. In a suit by the plaintiff praying for his right of ownership and possession, which was menaced by the defendant's decree and sale, *held*, the onus was on the defendant to show that he had an equitable right which he could assert against the plaintiff. **SHURFUM BIBEE v. COLLECTOR OF SARUN** — — — xii 66 note

ONUS PROBANDI—continued.

7. — *Execution sale—Suit to set aside sale—Bonâ fide.*] In execution of a decree, the judgment-debtor's right, title, and interest in a certain property was attached. The plaintiff thereupon preferred a claim under conveyances from the judgment-debtor; but it was rejected, and the property was sold. The judgment-creditor purchased the same at the auction and sold it to the defendant, who ousted the plaintiff, who thereupon sued to recover possession under his conveyance. *Held*, that the onus was not entirely on the plaintiff to prove the *bona fides* of the sale, but that the evidence adduced by the defendant should be examined also. *SRIMATI DEBI v. MADAN MOHAN SING* - - - ii A. C. 396

8. — *Claim—Dispossession—Act VIII of 1859, s. 230.*] One shareholder, being dispossessed by the other of a certain jalkar in execution of his decree, brought a suit under s. 230, Act VIII of 1859, alleging that the jalkar had been a part of their joint mehal; and that, on partition thereof, the jalkar was left ijmali. The decree-holder set up that the jalkar had been formed after the partition, and by diluvion of one of his own villages. *Held*, that the onus was upon the claimant to prove his case. *UDAI TARA CHOWDRAIN v. KHAJA ABDUL GANI* - - - iii Ap. 90

9. — *Title—Possession.*] In a suit to recover possession of certain property, on proof that the plaintiff had been dispossessed by a benamidar, in whose favor a conveyance had been executed by the plaintiff's father,—*held*, that the presumption arising from the defendant's recent and unexplained possession being rebutted by the plaintiff's prior continuous and peaceful possession, the defendant must show affirmatively that his title was a valid one, and could not raise the defence that the plaintiff was prevented from showing it to be invalid. *MAHESH CHANDRA BANERJEE v. BARADA DEBI* - - - ii A. C. 274

10. — *Suit for possession—Title.*] In a suit to recover possession of land and wasilat under a ganti jama, which had originally belonged to the defendants, the main question was as to ten katas, of which possession by receipt of rent only was claimed from the defendants, whose dwelling-house was thereon. The defendants alleged that the ten katas were not included in the ganti jama under which plaintiffs claimed. *Held*, that the onus was on the plaintiffs to prove that the ten katas were included in the ganti jama under which they claimed. It was not on the defendants to show the extent of that tenure while it was in their possession and when it was transferred to the plaintiffs, although the fact was one peculiarly within their knowledge. *GIRDHAR HARI v. KALIKANT ROY CHOWDERY* - - - iii A. C. 161

11. — *Suit for closing new road and opening old one—Title.*] In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an

ONUS PROBANDI—continued.

old road which had been closed by the defendants, *held*, that the only question which can be tried in the suit is, whether the defendants have trespassed on the land of the plaintiff by opening a road. The onus is upon the plaintiff to prove that the land belongs to him. *HIRA CHAND BANERJEE v. SHAMA CHARAN CHATTERJEE* - - - iii A. C. 351

12. — *Suit for declaration of title—Production of title-deeds.*] The plaintiff sued for declaration of her title to property, of which the defendant was in possession, but of which she produced the title-deeds in favor of herself. *Held*, the onus was on the defendant to disprove the plaintiff's title. *SWARNAMAYI RAUR v. SRINIBASH KOYAL* - - - vi 144

13. — *Auction-purchaser at sale for arrears of revenue—Incumbrances—Title—Possession.*] In a suit by an auction-purchaser of a permanently settled estate to recover certain jalkars, of which the defendants had been admittedly in possession for nearly fifty years, and which they claimed as incidents to a tenure which existed before the date of the permanent settlement, it was *held*, that the onus was on the plaintiff to prove his title affirmatively. *FORBES v. MEER MAHOMED HOOSAIN* - - - xii P. C. 210

14. — *Suit for possession and to have deeds declared fraudulent—Purchaser.*] The plaintiff executed a deed of sale of a moiety and a lease of the other moiety of certain property to B. B. instituted a suit under s. 15, Act XIV of 1859, which was dismissed. B. then returned the deed of sale and lease to A., with the following endorsement under his signature,—“returned, no claim.” A. instituted the present suit for recovery or possession of the said property, and the defendant set up in his defence that he had no right to sue for a moiety of the property as the same had been conveyed to B., and that the endorsement on the deed of sale was not admissible in evidence as it had not been registered. *Held*, that the onus was upon the defendant to prove his purchase. *GIRISH CHANDRA ROY CHOWDERY v. AMINA KHATUN* - - - iii Ap. 125

15. — *Suit to set aside order finding deed not genuine.*] In a suit brought to set aside an order of the Small Cause Court in which that Court had held that a certain deed was *malâ fide*,—*held*, that the onus was on the plaintiff to show that it was executed *bonâ fide*. *ISHAN CHANDRA DAS v. RUKIMUDDIN SOWDAGAR*, [ii A. C. 326 note

16. — *Execution of deed by pardanashin lady—Suit to set aside deed.*] In a suit by the heirs of a Mahomedan pardanashin lady to set aside a deed of sale executed by her whilst living apart from her relations in the house of the purchaser, who had occasionally acted as her mookhtar,—*held*, that some evidence to impeach the deed should be given by the plaintiffs before the onus of supporting it is thrown on the purchaser. *THAKOOR DEEN TEWARRY v. ALI HOSSEIN KHAN* xiii P. C. 427

ONUS PROBANDI—continued.

17. — *Evidence—Execution of document by parda ladies—Agency.*] The plaintiff sought to make two parda ladies liable on a document which he alleged had been executed by a third person as their agent. *Held* (reversing the decision of the High Court), strict proof of the agency must be given. *AZERZOONISSA v. BAQUR KHAN* - - - - - x P. C. 205

18. — *Enhancement of rent—Act X of 1859, s. 13.*] S. 13 of Act X of 1859 is applicable not merely to ryots having rights of occupancy, but to all under-tenants and ryots. The landlord cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance without notice specifying the grounds of enhancement. The onus of proving the existence of the grounds alleged is upon the landlord. *BAKRANATH MANDAL v. BINODRAM SEN* i F. B. 25

19. — *Suit for enhancement of rent—Ground of enhancement—Act X of 1859, s. 17.*] In a suit for enhancement of rent, on the ground that "the produce and productive powers of the land have increased otherwise than by the agency or at the expense of the ryot," the onus is upon the plaintiff to prove the grounds upon which he seeks enhancement. *RAJKRISHNA MOOKERJEE v. KALI CHARAN DOBAIN* - - - - - vi Ap. 123

20. — *Act X of 1859, s. 17, cl. 2—Suit for enhancement of rent.*] Where, in a suit for enhancement on the ground that the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot, the defendant admits the increase in productiveness, but denies the alleged cause, the onus of proving that the productiveness has been increased by other means lies on the plaintiff. *PULIN BEHARI SEN v. WATSON*, [Sup. Vol. 904

21. — *Lakhiraj—Enhancement of rent.*] The suit was for enhancement of rent. The defendant set up that certain plots of land, the rent of which was sought to be enhanced, were lakhiraj, and therefore not liable to pay rent. *Held*, that the onus was not upon the defendant to prove the land was lakhiraj, but upon the plaintiff to prove that the land was *mâl*, or rent-paying. *Semble*.—The Courts are accustomed to require some *primâ facie* evidence from defendants raising such defence that they hold some lakhiraj lands. *SRIDHAR NANDI v. BRAJA NATH KUNDU CHOWDHRY*, [ii A. C. 211

22. — *Enhancement of rent—Suit for arrears of rent.*] In a suit for arrears of rent at an enhanced rate, where the defendant set up that he had relinquished all the *mâl* land in his occupation, and that the residue of the land in dispute was lakhiraj,—*held*, that the onus was upon the plaintiff to prove that the land for which he sued for enhanced rent was rent-paying, and not on the defendant to make good his defence. *MAHOMED AZSAR ALI v. NASSIR MAHOMED* - - - - - iii A. C. 304

ONUS PROBANDI—continued.

23. — *Enhancement of rent—Reg. VIII of 1793, ss. 48, 51—Registration.*] In a suit for enhancement of rent, *held* that, in order to bring a talook within the scope of s. 51, Reg. VIII of 1793, it was sufficient to show that the tenure existed, and was capable of being registered at the time of the decennial settlement, the fact of actual registration not being an essential element in the formation of a talook. *Held* further, that the effect of proof of the existence of such a talook at the time of the decennial settlement is sufficient to throw the onus on the plaintiff to prove that it was held at a variable rent. *RADHIKA CHOWDHRAIN v. BAMSUNDARI DAS*, [iv P. C. 8

24. — *Suit for resumption under Reg. XIX of 1793, s. 10.*] In suits in a Civil Court for resumption under Reg. XIX of 1793, s. 10, the onus is upon the plaintiff to prove a *primâ facie* case. The decisions in *Sonatum Ghose v. Abdool Farar* (Sup. Vol. 109) and *Heera Monee Debi v. Koonj Behary Holdar* (Sup. Vol. Ap. 8), upheld. *HARIHAR MUKHOPADHYA v. MADHAB CHANDRA BABU and NABAKRISHNA MOOKERJEE v. KAILAS CHANDRA BHUTTACHARJEE* - - - - - viii P. C. 566

25. — *Suit for kabuliât—Act X of 1859, s. 77—Intervenor.*] In a suit to obtain a kabuliât, the defendant admitted the plaintiff's title. A third party intervened (under s. 77, Act X of 1859) alleging that he was in actual receipt and enjoyment of the rent. *Held*, that the onus was on the intervenor to prove that he was *bonâ fide* in actual receipt and enjoyment of the rent, and not on the plaintiff to prove his possession. *BAHARULLA v. MAJAN* - - - - - iii Ap. 61

26. — *Intervenor—Civil Procedure Code, s. 73—Suit for possession.*] Where the plaintiff sued to recover possession of certain property which he alleged he had purchased from H., and proved his purchase, and B., the mother of H., intervened and contended that the property was her own and purchased for herself and not on behalf of H.,—*held*, the onus was on B. to prove the title. *JAGGADANAND MISSEER v. HAMID RASUL* - - - - - viii 182 note

27. — *Landlord and Tenant—Beng. Act VIII of 1869, s. 20.*] The defendant held under a lease from the plaintiff which expired in 1867, when he gave up possession without any notice. In a suit subsequently brought against him for arrears of rent of 1867, 1868, and 1869, *held*, that the onus was on the plaintiff to prove that the defendant held on after the term of the lease had expired. No written notice of relinquishment was necessary. S. 20, Beng. Act VIII of 1869, did not apply. *TILAK PATAK v. MAHABIR PANDAY*, [vii Ap. 11

28. — *Landlord and tenant—Right of tenant to dig a tank on his land.*] In a suit by a zemindar alleging that the defendant, his tenant, had dug a tank on his land, and thereby done him damage by converting the land from

ONUS PROBANDI—continued.

its original state, and the conversion is admitted by the defendant, but his defence is that he had a right to convert it, the onus is on the defendant to show his right to dig the tank. In the absence of clear proof of the nature of his tenure, he should at least show that the digging the tank is a fair and reasonable use of the land, and one which will not be to the detriment of the zemindar. **TARINI CHARAN BOSE v. DEBNARAYAN MISTRI** — viii Ap. 69

29. — *Landlord and tenant—Ejectment of ryot—Right of occupancy.*] In a suit by a zemindar against a ryot for recovery of possession of land, of which the plaintiff alleged he had granted the defendant a lease, and taken a kabuliati, and that the lease had expired, the defence was that the defendant did not hold under any lease from the plaintiff, that the kabuliati was not genuine, and that the defendant by his holding had acquired a right of occupancy. *Held*, the onus was on the plaintiff to prove the kabuliati and not on the defendant to prove that he had acquired a right of occupancy. Therefore, where the plaintiff failed to prove the kabuliati, the suit was held to be rightly dismissed, though the defendant failed to show any right of occupancy. **WALLAH ALLEE v. GOLAM GOUS**, [x Ap. 32]

30. — *Mortgage—Suit for redemption—Profits.*] In a suit for redemption, on the ground that the debt has been satisfied with interest, the onus is on the plaintiff. A mortgagee is not an assurer of the continuation of the same rate of profits as his mortgagor was able to raise. Hence an estimate of the rental preceding the mortgagor's possession is not sufficient proof of the profits in his time. **SHAH MAKHANLAL v. SRIKRISHNA SINGH**, [ii F. C. 44]

31. — *Reg. XVII of 1806—Mortgage—Promulgation of Statute.*] The plaintiff sued, on the 31st of December, 1861, to redeem a mortgage of lands in Sarun, dated the 30th of November, 1801. The mortgage money was payable on the 28th September, 1806. If not paid, the property was to vest absolutely in the mortgagee without foreclosure. The defendant admitted that he had not foreclosed; but stated that Reg. XVII of 1806 was promulgated in Sarun on the 7th January, 1807, and, consequently, that the money became due before the Regulation was promulgated. *Held*, the onus was on the plaintiff to prove that the Regulation was promulgated before 28th September, 1806. **SARIFUNNISSA v. INAYET HOSEIN** — — — — — Sup. Vol. 415

32. — *Recital in bond—Consideration.*] The plaintiff sued on a bond, which recited that the defendant had received the consideration mentioned in the bond. *Held*, that the onus was on the defendant to show that the recital in the bond was not correct. **FULLI BIBI v. BASSIRUDI MIDHA** — — — — — iv F. B. 54

33. — *Admission—Bond.*] A. sued B. on a bond, in which it was recited that B. had

ONUS PROBANDI—continued.

received the amount. B., in his written statement admitted execution, but stated that he had received the amount mentioned therein not under the bond, but on the pledge of certain jewellery. *Held* that, on the admission of the execution of the bond, which contained the recital of payment, the onus was upon B. to prove that payment had not been made under the bond. **MANIKLAL BABOO v. RAMDAS MAZUMDAR** — — — — — i A. C. 92

34. — *Written statement—Admission.*] In a suit by A. against B. for recovery of ancestral jammal lands, of which he alleged that he had been dispossessed by B., B. stated in his written statement that A.'s ancestor having relinquished the land, the zemindar had leased the same to him, B., and he had been in possession since. He also stated how A.'s ancestor relinquished, and that he, B., had thereupon obtained a patta. He denied that he had dispossessed A. *Held*, that B. having admitted the possession of A.'s ancestor, it lay upon B. to prove his title. **BAIKANTHANATH KUMAR v. CHANDRA MOHUN CHOWDHREY** — — — — — i A. C. 133

35. — *Hindu law—Adoption.*] A Hindu died leaving a son (who afterwards died a minor and unmarried), a widow, and three daughters. On the death of the minor the widow succeeded to the property, and, under a will of her late husband, adopted in 1851 a son of her husband's brother. The widow died in 1866. One of the daughters, as guardian of her infant son born in 1853, brought a suit to set aside the will, and with it the adoption, and for recovery of possession of the property left by her minor brother. The defence set up was that the will was genuine; that the plaintiff should have sued within twelve years from the adoption; and that she had in 1851 admitted the adoption in having accepted a dar-patni from the guardian of the adopted son. *Held*, that the onus was upon the adopted son to prove the validity of the adoption, and not upon the plaintiff suing as heir to prove its invalidity, even though he alleged fraud and adduced no evidence in support of it. **TARINI CHARAN CHOWDHREY v. SARODA SUNDARI DAS** — — — — — iii A. C. 145

36. — *Necessity—Mortgage by Hindu widow.*] The burthen of proving the necessity for a mortgage by a Hindu widow rests on the mortgagee, where that necessity is disputed by the next heir. **KOORER GOLAB SING v. RAO KURUN SING : RAO KURUN SING v. MAHOMED FYAZ ALI KHAN** — — — — — x P. C. 1

37. — *Religious endowment—Revocation of trust.*] In 1813 certain lands were dedicated by deed to the religious service of an idol, and in 1820 that dedication was confirmed in a partition-deed. The plaintiff sued to set aside alienations of the property and to have the trusts of the dedication-deeds declared. The holders of the property alleged that a subsequent partition-deed had been executed in 1845, and that the dealings of the family had shown an intention to revoke the trusts.

ONUS PROBANDI—continued.

Held, that it lay upon the holders to prove the revocation of the trusts, and that, on failure to do so, they could not set up the law of limitation in answer to the plaintiff's suit. **JUGGUTMOHENEER DOSSEE v. SOKHEEMONEER DOSSEE** - - - - - x P. C. 19

38. — *Recognizance to keep the peace.* The onus lies on the person who has obtained the summons to prove that the defendant is likely to commit a breach of the peace. **BEHARI PATAK v. MAHOMED HYAT KHAN.** [iv F. B. 46]

39. — *Valuation of suit—Assertion by defendant that suit is over-valued.* When the defendant asserts that a suit is over-valued, the onus of proving the truth of his assertion lies on him. **UMA SANKAR ROY CHOWDHRY v. MANSUR ALI KHAN** - - - - - v Ap. 6

40. — *Execution of decree—Attachment of person of debtor.* In an application for an order for execution of a decree by attachment of the person of the debtor, the onus is on the judgment-debtor to show that he has no means of satisfying the debt, and that he has not been guilty of any misconduct; and not on the creditor to show that, by sending the debtor to prison, some satisfaction of the debt would be obtained. **SETON v. BLOHN**, viii 255

OPINIONS OF JUDGES, MEMORANDA OF.

See JUDGMENTS.

OPIUM, ILLEGAL POSSESSION OF.

See ACT XIII OF 1867.

ORDER AND DISPOSITION.

See INSOLVENCY.

ORDER IN EXECUTION OF DECREE.

See SPECIAL APPEAL.

ORDER "MADE ON APPEAL."

See APPEAL TO PRIVY COUNCIL.

ORDER OF CRIMINAL COURT OBTAINED ON A MISSTATEMENT OF FACTS.

See REVIEW IN CRIMINAL CASES.

ORDER OF EXECUTIVE NATURE.

See SUPERINTENDENCE OF HIGH COURT.

ORDER OF MAGISTRATE DISMISSING MINISTERIAL OFFICER.

See APPEAL.

ORDER OF MAGISTRATE UNDER CRIMINAL PROCEDURE CODE, ss. 308—316, SUIT TO SET ASIDE.

See DECLARATORY DECREE, SUIT FOR.

ORDER REFUSING TO ADMIT SPECIAL APPEAL.

See REVIEW.

ORDERS IN EXECUTION OF DECREE OF PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL.

ORIGINAL SIDE, CRIMINAL.

See SUPERINTENDENCE OF HIGH COURT.

ORIGINAL SIDE, POWERS OF JUDGE SITTING ON.

See CERTIFICATE OF ADMINISTRATION.

OWNERS AND OCCUPIERS, FINE IMPOSED ON.

See BENG. ACT III OF 1864.

OWNERSHIP, TRANSFER OF.

See VENDOR AND PURCHASER.

PAPER-BOOKS, DELIVERY OF.

See PRACTICE.

PARDANASHIN WOMEN.

See EVIDENCE, PAROL EVIDENCE.
ONUS PROBANDI.

2. — *Execution of decree—Arrest, exemption from.* Pardanashin women, or women who according to usage of the country ought not to be compelled to appear in public, are not exempt from arrest in execution of a decree. **MAHARANI OF BURDWAN v. BARADASUNDARI DEBI** - - - - - i F. B. 31

3. — *Privileges of, as witnesses.* Privileges of pardanashin ladies when attending Court in palanquins as witnesses considered. The general rule is that the lady should be admitted into Court in her palanquin, and give her evidence in it, after being properly identified. **QUEEN ON THE PROSECUTION OF ROOKIA BANU v. ROBERTS** - - - - - i S. N. v

4. — *Execution of document—Onus probandi.* *Held*, that where the defendant, who was shown to be an illiterate pardanashin lady, denied on her oath that in executing a wakfnama she had any intention of creating an absolute wakf, or that she understood the effect of the deed when she executed it, the onus was on the plaintiffs to show that she was fully aware of the character of the document and its legal effect, and that she had proper professional advice at the time of its execution. In the absence of such proof, *held*, that the deed was not binding on her. **DELROOS BANOO BEGUM v. ASHGAR ALLY KHAN** - - - - - xv 167

See also the Cases of **MANOHAR DASS v. BHAGABATI DAS** - - - - - i O. C. 28
KANAILAL JOWHARI v. KAMINI DEBI, [i O. C. 31 note]

THAKOORDEEN TEWARY v. ALI HOSSEIN KHAN - - - - - xiii P. C. 427

PARDON—Prisoner—Witness—Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. **QUEEN v. GAGALU MAGALU** - - - - - iv Ap. 50

PAROL EVIDENCE.

See EVIDENCE.

PARTIES.

See ACT X OF 1859, s. 77.

CIVIL PROCEDURE CODE, s. 73.

CO-SHARRERS.

ILLEGITIMACY.

RECEIVER.

SUIT ON BEHALF OF DECEASED LUNATIC'S ESTATE.

2. — *Landlord and tenant—Suit for possession.* Where a lessor, who had never been in possession, granted a patta of lands to which his title was disputed, and the lessee was kept out of possession by the defendants, who disputed the lessor's title, *held*,

PARTIES—continued.

that the lessee could maintain his action for possession of the lands, and need not make his lessor a co-plaintiff. **FRANKRISHNA DEY v. BISWAMBHAR SEN** - - - ii A. C. 207

3. — *Act X of 1859 — Arrears of rent — Benami lease—Sureties.*] Some of the defendants had taken a lease in the benami name of C. P. B., and were in actual possession of, and had paid rent for, the lands demised. The other defendants were sureties for C. P. B. A suit was brought in the Court of the Deputy Collector against those who were actually in possession of the land, together with the sureties, for arrears of rent. It did not appear from the lease how far each defendant was interested in or entitled under it. *Held*, by both Judges, that the suit should be dismissed as against the sureties, who could not as such be sued under Act X of 1859. **ROY PRIYANATH CHOWDHRY v. BEPINBHARI CHUCKERBUTTY**, [ii A. C. 237]

4. — *Bond—Suit for a share of a debt.*] A. B., and C. were uterine brothers, Mahomedans, to whom jointly a sum of money was due on a bond. A., the elder brother, sued the debtor for recovery of the debt, and, after successfully resisting the claim of B.'s widow to be made a party to the suit, obtained a decree for the principal and interest to the date of decree, together with subsequent interest and costs. A. realized the decree for the principal and interest to the date of decree only. B.'s widow, on behalf of herself and two minor sons, sued A. for the share of the decretal moneys which belonged to her husband's estate. She refused to join her daughters as parties. *Held*, that she was entitled to recover a third share of the amount realized under A.'s decree, minus the share of her two daughters. **NURUNNISSA v. ROUSHAN JAN** - - - ii Ap. 1

5. — *Purchaser under execution against assets of testator—Mortgage—Suit for foreclosure.*] A creditor who purchases under an execution against the general assets of a testator's estate, takes subject to a mortgage created in pursuance of a power contained in the will; and in a suit to foreclose the purchaser is rightly made a party. **NILKANT CHATTERJEE v. PEARY MOHAN DAS** - - - iii O. C. 7

6. — *Suit to set aside alienation of ancestral property — Mitakshara—Legal necessity.*] J. L. and H. N., brothers, members of a joint Hindu family subject to the Mitakshara law, borrowed money by absolute and conditional sales of their joint estate. After the death of J. L., his son, L. P., brought a suit against the alienees to recover possession of the lands by reversal of the deeds, as to one-half share thereof, which he claimed as the share of his father, J. L., on the ground that there had existed no legal necessity justifying J. L. and H. N. in alienating the property. Neither H. N., nor any one representing him, had been made a party to the suit. There was nothing to show that the family had been separated, or the property partitioned. *Held*, the suit

PARTIES—continued.

should have been brought by all the joint members to set aside the deeds. If the other members refused to join as plaintiffs, they should have been made defendants. **RAJA RAM TEWARI v. LACHMAN PRASAD**, [iv A. C. 118]

7. — *Civil Procedure Code, ss. 73, 350—Act XXVII of 1860, s. 4—Adding parties—Certificate of administration—Suit by co-heir against holder of certificate.*] In a suit against a co-heir, who had obtained a certificate under Act XXVII of 1860, for an account of the estate of the deceased proprietor, a third party was added as a defendant under s. 73 of Act VIII of 1859, "it appearing from the accounts put in that a large portion of the assets had been disposed of by him as agent" of the holder of the certificate. On appeal, *held*, that a co-heir is entitled to follow property of the deceased into the hands of any person who has misappropriated it, and such right is not taken away by the certificate. Therefore, any person who, with the consent of the holder of the certificate, has improperly possessed himself of property belonging to the deceased, and misappropriated it, may be joined as a co-defendant. The third party was rightly so joined in this case. **NGA THA YA v. MI KHAN MHAW** - v 371

8. — *Suit for specific performance — Receiver.*] Where the receiver in a suit had, by order of Court, sold certain property in the suit, and had executed the contract of sale in his own name, a plaint praying for specific performance against the purchaser for refusing to complete the contract was admitted with the receiver as co-plaintiff, he having obtained leave to sue. **WILKINSON v. GANGADHAR SIKKAR** - - - - - vi 486

9. — *Suit for rent.*] Where a tenant held lands in six villages under a patnidar at an admitted rent, and the patnidar subsequently granted darpatis to two different parties of two and four of the said villages respectively, the tenant having admitted a certain sum to be the rent payable in respect of the lands situated in the two villages, *held*, the darpatnidar of the other four villages could sue the tenant for the rent payable in respect of the lands situated in the four villages comprised in his darpatis, without joining as co-plaintiff in the action the darpatnidar of the two villages. **BRAJA LAL ROY v. SAYAMA CHARAN BHUTTO** - - - - - vi 523

10. — *Suit for possession and declaration of right to participate in a permanent settlement of a mahal resumed under Reg. II of 1819.*] Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government in 1835, and declared to be liable to assessment under Reg. II of 1819. The recorded proprietors of the adjoining permanently-settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time, and subsequently

PARTIES—continued.

leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements, and also reserved an allowance of 10 per cent. on the rent as malikana on their account, which sum had been kept in deposit in the Collectorate treasury. In 1867 the Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur, and refused the application of other shareholders in the estate to be joined in the settlement. The Collector, at the request of the defendant, applied the deposit in his treasury in satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession, and a declaration of his right to participate in the settlement. *Held*, that it was not necessary to make the Government a party. KRISHNA CHANDRA SANDALY CHOWDHRY v. HARISH CHANDRA CHOWDHRY.

[viii 524]

11. — *Suit for land sold in execution of decree—Actual purchaser.* In a suit for possession of land sold in execution of a decree by a person who claimed to have bought the right, title, and interest of the judgment-debtor in the land, but who, in fact, was not the real purchaser, *held*, the suit must be dismissed because of the non-joinder as plaintiff of the real purchaser. KALLY PROSONNO BOSE v. DINONATH MULLICK - - - xi 56

12. — *Benami purchase—Suit for possession—Real purchaser.* A suit for possession of property which has been purchased benami, cannot be maintained in the name of the nominal purchaser; the real purchaser should be made a plaintiff in the suit. FUZELUN BEEBEE v. OMDAH BEEBEE - - - xi 60 notes

13. — *Suit to set aside settlement.* In a suit by a person claiming certain lands which have been resumed by the Government and settled with another party, the Government should be made a party. MAHOMED ISRAILE v. WISE - - - xiii F. B. 118

14. — *Act IX of 1850, s. 32—Suit for legacy or distributive share under intestacy—Deposit.* K. died, leaving a will directing a certain sum to be paid to M. his widow, the unexpended balance of such sum to go at the death of M. to his heirs. M. brought a suit against the executors of K.'s will, which was compromised on the payment by them to her of a certain sum. This sum she deposited with N., one of the members of a firm, to be invested in N.'s own name, he paying her such interest as it yielded him. On the dissolution of the firm the sum deposited by M. was made over to N. alone, and on the death of N., his estate, and with it the sum deposited by M., came into the hands of the sons of N. On the death of M., the plaintiff and two others were the heirs of K. In a suit brought by the plaintiff against the sons of N. for a third share of the

PARTIES—continued.

sum deposited by M.—*held*, that such a suit was not a "suit for a distributive share under an intestacy, or of a legacy under a will" within s. 32, Act IX of 1850. All the parties claiming to be entitled to any interest in the sum deposited should have been made parties to the suit. HARAN CHANDRA MOOKERJEE v. NANDAGOPAL MUTTYLALL - - - xiii 142

PARTIES IN COURT BELOW NOT MADE PARTIES TO APPEAL.*See COSTS.***PARTIES IN DECREE NOT PARTIES TO SUIT.***See ACT XXIII OF 1861, s. 11.***PARTIES TO CONVEYANCE.***See RECEIVER.*

2. — *Mortgagor and mortgagee—Sale of mortgaged properties in execution of decree—Purchase by mortgagee.* Where a mortgagee becomes the purchaser of property sold under a decree for sale obtained by him on his mortgage, it is not necessary that the mortgagor should join in the conveyance of the property to the mortgagee. JALEERAM v. CHUNDER COOMAREE DOSSEN - - - xii Ap. 7

PARTITION.*See HINDU LAW, PARTITION.***JURISDICTION OF CIVIL COURT.****SALE FOR ARREARS OF REVENUE.**

2. — *Reg. XIX of 1814—Civil suit.* Where a partition of an estate under Reg. XIX of 1814 has been carried out, and confirmed by the revenue authorities, it seems that one shareholder cannot maintain a suit in the Civil Court to have it declared that he is entitled to a share larger than he claimed in the partition proceedings, RAMRAHAYA SINGH v. MUZHAR ALY - - - ii Ap. 40

3. — *Reg. XIX of 1814, ss. 4 and 20, cl. 2—Jurisdiction of Civil Court—Suit for larger share than that allotted by Collector.* S. 20, Reg. XIX of 1814, which says, "the determination of the Board of Revenue or Board of Commissioners on the paper of partition shall be final," refers to those questions only which can be legally determined by the revenue authorities, and will not prevent a regular suit being instituted to establish a right and title to the land, which a party has lost by a batwara, notwithstanding that the plaintiff may have failed to make his objection before the Collector within fifteen days as required by cl. 2, s. 4, Reg. XIX of 1814. There is nothing in the batwara law or in any other Regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. Where a batwara had been made, and the plaintiff had had a specific share allotted to him, but which share was less than his proper share in the estate, and the plaintiff brought his suit against the co-sharers generally, without specifying in whose share the quantity he had lost was included, *held*, the Court could, in such suit, declare the plaintiff's title to the same, treating

PARTITION—continued.

him as a shareholder to that extent only in the patta in which it may have been included. *SPENCER v. PUHUL CHOWDHRY* - - - vi 658
See also KUNJ BEHARI SING v. NERU SING,
 [vi 658 note]

4. — *Reg. XIX of 1814—Jurisdiction of Collector—Title—Suit in Civil Court for declaration of title.* The Collector cannot try the question of title in batwara proceedings under Reg. XIX of 1814. A suit for possession and declaration of mokurari title to certain lands can be entertained in the Civil Court notwithstanding the batwara proceedings. *AHMEDULLA v. ASHRUFF HOSSEIN*,
 [viii Ap. 73 note]

5. — *Purchaser of share of lakheraj estate—Jurisdiction of Civil Court.* The purchaser of a share in an undivided lakheraj estate can sue his co-parceners for a partition of his share, and the Civil Court has jurisdiction to carry out the partition. *FATTEH BAHADUR v. JANKI BIBI* - - - - - iv Ap. 55

6. — *Reg. XIX of 1814—Suit to set aside Collector's partition—Jurisdiction of Civil Court—Minor, right of.* A partition by the Collector under Reg. XIX of 1814, if consented to by all the parties, is final, and cannot be set aside by any party in the Civil Court; but where one of the parties was a minor at the time of partition, the Court remanded the suit for an inquiry whether his guardian acted in the partition proceedings *bonâ fide*, and with a due regard to the interests of the minor. *HARI PRASAD JHA v. MADDAN MOHAN THAKUR* - - - - - viii Ap. 72

7. — *Right to enforce partition—Patnidar of undivided share.* One patnidar of an undivided share of a zemindari held by joint proprietors, has no right to sue to enforce partition against another patnidar where there is no contract between the two, or between the patnidar and his zemindar, to divide. *RIDAI NATH SANDYAL v. ISWAR CHANDRA SAHA*,
 [iv Ap. 57 note]

8. — *Mortgage by co-sharer—Incumbrance—Cause of action—Reg. XIX of 1814.* A., one of the shareholders of a talook consisting of several mauzas, mortgaged his share in one of the mauzas named Kishoore to B. Upon a partition being made under Reg. XIX of 1814, the mauza Kishoore was allotted to C. and D., co-parceners in the talook, and other mauzas were allotted to A. In a suit by C. against B. for obtaining possession of his share in Kishoore, *held*, that there was no cause of action. Upon a partition of a joint property, a co-parcener is bound by the incumbrances created by another co-parcener in respect of a portion of the property, if such portion be allotted to him upon a partition between the co-parceners. *NISHAN SING v. JUGDEO SING* - - - - - iv Ap. 97

9. — *Reg. XIX of 1814—Suit for confirmation of possession.* To a partition effected by the revenue authorities under Reg. XIX of 1814 the plaintiff presented a petition of objection,

PARTITION—continued.

in which he alleged that his share had been included in and declared to be part and parcel of the defendant's share. In a suit for a declaration of his right to the share claimed by him, and for confirmation of possession thereof, both the lower Courts gave a decree for the plaintiff. On special appeal an objection was taken that the suit would not lie, no application having been made in it for the annulment of the partition proceedings by which the property sued for was included in the plaintiff's share. *Held*, that the suit would lie, that there was no necessity for the plaintiff who claimed to be in possession of his proper share, and sued only for a declaration of his title thereto, to include in his plaint an application for the renewal of the partition proceedings. Those proceedings were final. *INDRABATI KUNWARI v. MAHADEO CHOWDHRY*,
 [i S. N. vi]

10. — *Joint ownership in right of worship of idol.* The reasons for which one of several joint owners is entitled to a partition of the joint property, apply also to the case of a joint right of performing the worship of an idol. The joint owners of such a right are entitled to perform their worship by turns. *MITTA KUNTH AUDHICARRY v. NEERUNJUN AUDHICARRY* - - - - - xiv 166

11. — *Suit for—Portion of property out of, and portion within, jurisdiction—Parties.* A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore where, in a suit for partition, it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the mofussil property were included, and that therefore the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. *PADMA-MANI DAS v. JAGADAMBA DAS* - - - vi 134

12. — *Co-sharers—Effect of partition.* In cases of joint ownership each party has a right to demand and enforce partition. A shareholder of a patni talook can claim and enforce a partition of such patni talook as against his co-sharers, but such partition would not affect the liabilities of the parties under their contract with the zemindar. *SHAMA-SUNDARI DEBI v. JARDINE, SKINNER*,
 [iii Ap. 120]

13. — *Suit to set aside sale for arrears of revenue—Sanction of Board of Revenue.* *Per BAYLEY, J.*—The completion of the partition is not necessary under Act XI of 1838 before the amount of unpaid expenses can become an arrear realizable by sale. *Semble*.—The Government need not give its sanction in each case, but a "general" sanction will be sufficient. *HAR GOPAL DAS v. RAM GOLAM SAHI*,
 v 135

PARTITION, EFFECT OF, AS TO PRE-EMPTION.
See MAHOMEDAN LAW, PRE-EMPTION.

PARTITION, RIGHT TO.*See* HINDU LAW, CUSTOM.**PARTITION, SUIT FOR.***See* COSTS.

LETTERS PATENT, CL. 12.

MESNE PROFITS.

VENDOR AND PURCHASER.

PARTNER OF DIRECTOR APPOINTED AS SOLICITOR OF COMPANY.*See* COMPANY.**PARTNERS.***See* PLAINT.

SERVICE OF SUMMONS.

PARTNERSHIP — *Participation in profits—Application of English law.* *M. M. & Co., merchants in London, carrying on business with W. N. W. & Co., merchants in Calcutta, sought to make the defendant liable as a partner in the latter firm, under a particular memorandum of agreement between the members of the firm of W. N. W. & Co. and the defendant. Held, that such agreement did not constitute the Rajah a partner in or with the said firm. Participation in profits does not constitute a partnership. The question is, not whether the person sought to be made liable participated in the profits, but whether the trade has been carried on by persons acting on his behalf. There is no rule of law which imposes partnership liability upon a man who advances to others money for the purpose of carrying on their business, and in return secures to himself a share of the profits which may arise from the employment in the business of the money so advanced by him. PRATAB CHANDRA SINGH v. MOLLWO, MARCH,*

[iii A. C. 238]

2. — On appeal to the Privy Council, *held*, although a right to participate in the profits of trade is a strong test of partnership, and there may be cases where, from such participation alone, it may, as a presumption, not of law but of fact, be inferred, yet whether that relation does or does not exist must depend on the real intention and contract of the parties. To constitute a partnership, the parties must have agreed to carry on business and to share profits in some way in common; but where a contract is entered into between partners and a third person for the protection of that person as a creditor, whereby it is agreed that he shall receive in consideration of advances commission on the net profits of the partnership business, and large powers of control over the business are given to him, but no power to direct transactions, the Court, if satisfied that the contract was one of loan and security, will not interpret it as constituting a partnership. In applying the English law of partnership to cases in India, the usages of trade and habits of business of the people of India, so far as they may be peculiar and differ from those in England, ought to be borne in mind. MOLLWO, MARCH v. COURT OF WARDS,

[x P. C. 312]

3. — *Joint Hindu family — Account.* There is no analogy in respect of the manager

PARTNERSHIP—continued.

being liable to account between a joint Hindu family and a partnership. Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept, on the understanding that the profits when realized should be divided amongst the individual members in certain proportions, and that the expenses of each member should be credited and charged in the name of each member, *held*, that this was in the nature of a partnership, and an account was decreed. RANGANMANI DAS v. KASINATH DUTT — iii O. C. 1

4. — *Baniam—Lien of banian on goods under agreement with firm—(Construction of agreement.)* The plaintiff became banian to the defendants, under an agreement by which he had a lien upon all goods "belonging to" them in their godowns, for balances that might be due by them. Some time after the date of the agreement, while there was a balance due, the defendants' firm took in a new partner. *Held* that the words "belonging to" included all goods in the possession of the new firm that came to them in the way of business. *Held* also, that the new firm, not having given notice to the contrary, must be taken to have engaged the plaintiff as banian upon the terms expressed in the agreement with the old firm, and to have taken over the balance due at the time when the new firm was constituted as a debt due by the new firm. BALDEO DAS AGARWALLA v. KAICH — — — iii O. C. 80

5. — *Dissolution of partnership—Adultery of partner with wife of co-partner.* Adultery of one partner with the wife of his co-partner is a sufficient ground for dissolution of the partnership. ABBOTT v. CRUMP — — v 109

6. — *Liability of partner for purchases made by co-partner out of the scope of partnership business—Application of proceeds of sale to pay partnership debts.* C., the managing member in Calcutta of a firm of which B. the other partner was absent in England, made, unknown to B., and without authority from him, various purchases from the plaintiff of articles not within the scope of the partnership business. The purchases were made as for the firm, and were delivered on the partnership premises by the plaintiff. Subsequently, the goods were taken to C.'s house, and, together with certain private property belonging to C., were sold by auction, and the whole proceeds of the sale were paid by C. to a Bank in Calcutta to the partnership account with that Bank, and were eventually remitted to B. in England as from the partnership funds, and applied in payment of certain bills of the firm then due. B., on coming to Calcutta, took over the management of the business from C. In a suit brought against B. and C. for the price of the goods purchased from the plaintiff, *held*, both in the Court below and on appeal, that B. was not liable. MARTIN v. BAKER xv 372

PARTNERSHIP ASSETS.*See* ATTACHMENT.

PARTNERSHIP BOOKS.*See EVIDENCE.*

PARTNERSHIP PROPERTY—*Fraudulent removal of—Penal Code, ss. 378, 405, and 424—Criminal misappropriation and breach of trust—Theft.*] K. the servant of A. and others, partners, was coming out of the Small Cause Court with some books belonging to the partnership shop, when A. took them from him and kept them, saying they were his, and refused to give them up. The Magistrate found A. guilty of theft under s. 378. *Held*, the conviction could not be sustained, the possession of K. was the possession of A. and the partners, and A. could not therefore be convicted of theft. **QUEEN v. ALLAH BUKSH** - - - xiii 310 note

2. — A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted, or which he has dominion over, is guilty of an offence under s. 405 of the Penal Code. **QUEEN v. OKHOY COOMAR SHAW**; *IN THE MATTER OF THE PETITION OF NAGENDRA LAL CHATTERJEE* - - - xiii F. B. 307

3. — Also a partner who fraudulently removes partnership property is guilty of an offence under s. 424, Penal Code. **QUEEN v. GOUB BENODE DUTT** - - - xiii 308 note
PATNI TALOOK.

See SALE FOR ARREARS OF RENT.

2. — *Hereditary interest—Construction.*] The words "patni talook" *prima facie* convey an hereditary and transferable interest in land. **TARINI CHARAN GANGULI v. WATSON**, [iii A. C. 437]

PATNIDAR, RIGHT OF.*See ABATEMENT OF RENT.***PAUPER SUIT.***See REVIEW.*

2. — *Next friend a pauper—Infant.*] A suit can be brought in *forma pauperis* by a next friend, who is also a pauper. **GOLAUP-MONEE DOSSEE v. PROSONOMOYE DOSSEE**, [xi 373]

3. — *Civil Procedure Code, ss. 304, 306—Procedure.*] Where a petition in a suit in *forma pauperis* had been admitted, the usual order made under s. 305, Act VIII of 1859, and the case came on for hearing under s. 306, it was proposed for the defendant to show by examination of the plaintiff that, on the facts stated in the petition, she had no cause of action, and it was objected that no question except the pauperism of the plaintiff could be gone into under s. 306,—the Court allowed the plaintiff to be examined to show that on her own evidence she had no cause of action, but refused to allow other witnesses to be called upon. From the plaintiff's evidence the defendant failed to show that there was no cause of action. **TARRAMONEY DABEE v. HURRO MOHUN CHATTERJEE** - - - - xi Ap. 23

4. — But see *In re Gunga Dass Adhikaree*, where it was held that where, on the day fixed for hearing evidence on the question

PAUPER SUIT—continued.

of pauperism, the defendant brings to the notice of the Court any ground on which it would have been bound to refuse to admit the petition, it is in the discretion of the Court to admit or refuse to receive evidence of such ground - - - xi Ap. 23 note

5. — *Right of Government to recover stamp fees—Limitation—Act XIV of 1859, s. 20—Civil Procedure Code, s. 309.*] A decree had been obtained by a party suing in *forma pauperis* against the appellant. The Government now sought to recover against the appellant the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper. *Held*, that the right of Government to recover the stamp fees in question, under s. 309 of Act VIII of 1859, is not affected by the law of limitation laid down in s. 20 of Act XIV of 1859. **SHAMI MOHAMMED v. MOHAMMED ALI KHAN** ii Ap. 22

PAYMENT INTO COURT.*See INTEREST.*

2. — *Arrest under writ of attachment—Voluntary payment—Objection by judgment-debtor to money being taken out.*] Payment of money into Court by a judgment-debtor, to prevent arrest under a writ of attachment, is not a voluntary payment; and on application by the decree-holder to take the money out, the judgment-debtor is not limited to those objections only which he raised to the right of the decree-holder at the time of paying the money in. **PARASNATH MOOKERJEE v. BINADIRAM SEN** - - - - iv Ap. 26

PAYMENT, COMPULSORY, OF MONEY FOR WHICH OTHER PERSON IS LIABLE.*See CONTRIBUTION, SUIT FOR.***PAYMENT INTO COURT BY MORTGAGEE TO PREVENT SALE OF MORTGAGED PROPERTY.***See MONEY HAD AND RECEIVED.***PAYMENT IN CONSIDERATION OF RELEASING PERSON FROM PRISON.***See CONTRACT.***PAYMENT TO STAY SALE.***See CONTRIBUTION, SUIT FOR.***PENAL CODE, s. 29.***See FORGERY.*

—, s. 59.

See SENTENCE.

—, s. 74.

See SOLITARY CONFINEMENT.

—, ss. 97, 99.

See PRIVATE DEFENCE, RIGHT OF.

—, ss. 107 and 232.

See ABETMENT.

—, ss. 109 and 211.

See ABETMENT.

—, s. 116.

See POLICE MAGISTRATE.

—, s. 121.

*See FORFEITURE OF PROPERTY.***WAGING WAR AGAINST THE QUEEN.**

PENAL CODE, s. 149.

See UNLAWFUL ASSEMBLY.

—, s. 174.

See CONTEMPT OF COURT.
HOLIDAY.

—, s. 188 — *Code of Criminal Procedure, s. 62—Trespass by cattle.* A Magistrate issued an order warning owners of cattle to take proper care of them, and that in case of disobedience or neglect, they would be punished according to law, and did punish them for disobedience under s. 188 of the Penal Code. *Held*, that the conviction under s. 188 of the Penal Code was illegal. IN THE MATTER OF AMIRADDI - - - - - iii A. Cr. 45

2. — *Act XXXI of 1860, s. 26—Criminal Procedure Code (Act XXV of 1861), ss. 250, 251 — Carrying fire-arms without license — Disobedience of an order promulgated by a public servant.* A Magistrate issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so, under s. 26 of Act XXXI of 1860; and certain persons were, in consequence of his notification, arrested and brought before him charged in a police report with carrying arms without license. No summons or warrant had been applied for, nor any complaint lodged before the Magistrate previous to the arrest of the prisoners. No charge in writing was framed as required under ss. 250, 251 of the Criminal Procedure Code. No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them under s. 188 of the Indian Penal Code, of disobedience of an order duly promulgated by a public servant. There was no evidence that the disobedience would cause, or tend to cause, annoyance, obstruction, or injury to human life, health, or safety. *Held*, the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on. QUEEN v. NANDEKUMAR BOSE - - - - - iii Ap. 149

—, ss. 191, 192, and 193.

See FALSE EVIDENCE.

—, s. 206 — *Fraudulent removal of property to prevent seizure in execution—Act X of 1859, s. 145.* Certain persons were convicted by the Deputy Magistrate, under s. 206 of the Penal Code, of having fraudulently removed property to prevent its being taken in execution of a decree under Act X of 1859. The Judge was of opinion that the offence was one provided for by s. 145 of Act X of 1859, and was not therefore triable by the Magistrate. *Held*, the prisoner was rightly tried and convicted under s. 206. GAURCHANDRA CHUCKERBUTTY v. KRISHNA MOHUN SING - - - - - ii S.N. iv

—, s. 211 — *False charge.* Procedure before framing a charge, under s. 211 of the Penal Code, of the offence of making a false

PENAL CODE, s. 211—continued.

charge with intent to injure, considered. IN THE MATTER OF THE PETITION OF GAUR MOHUN SING - - - - - viii Ap. 11

—, ss. 224, 225.

See SENTENCE.

—, s. 228.

See EVIDENCE ACT, s. 3.

—, s. 228, OFFENCE UNDER.

See CRIMINAL PROCEDURE CODE (ACT X OF 1872), ss. 435 AND 436.

—, s. 239.

See NUISANCE.

—, s. 300.

See CULPABLE HOMICIDE.

—, s. 304.

See CHARGE TO JURY.

—, s. 352—*Assault—Causing hurt—Autre-fois acquit.* A person who is tried and discharged for the offence of assault under s. 352, Penal Code, cannot again, upon the same complaint, be tried for "causing hurt." KAPTAN v. SMITH - - - - - vii Ap. 25

—, s. 353.

See SENTENCE.

—, ss. 372, 373 — *Obtaining possession and disposing of minor for purposes of prostitution.* S., a married Mahometan girl under 16, while living with N., her grandmother, and in the absence of her husband, formed an adulterous intrigue with two Hindus with the knowledge of N. S. and N. were then induced by the Hindus to remove to another village, that S. might take up the trade of a prostitute; they there met J., a public woman, with whom they went to reside, and who introduced visitors to S., and received the money paid by them in exchange for the board and food supplied to S. and N. N. was convicted, under s. 372, Indian Penal Code, of disposing of a minor for the purpose of prostitution, and J. was convicted, under s. 373, Indian Penal Code, of obtaining possession of a minor for the purpose of prostitution. *Held*, per JACKSON, J., that on the facts proved no offence was committed under the Penal Code. Per GLOVER, J.—N. and J. were both guilty under ss. 372 and 373 respectively, and their appeals should be dismissed. QUEEN v. NOURJAN AND JAGGUT TARA - - - - - vi Ap. 84

—, s. 376.

See SENTENCE.

—, s. 378.

See PARTNERSHIP PROPERTY.

—, s. 380.

See REVISION.

—, s. 405.

See PARTNERSHIP PROPERTY.

—, ss. 405, 406—*Criminal breach of trust—Cattle Trespass Act (I of 1871), s. 19.* The accused was sub-inspector of police at the thana of Dunyar. A pony was brought to the pound at the police station and confined there

PENAL CODE, ss. 406 and 406—continued.

under Act I of 1871. The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath. After some time the pony had eventually been purchased by the accused from a vendor from Gopinath. The Magistrate found on the evidence that there had been no sale under Act I of 1871, and convicted the accused of criminal breach of trust and sentenced him under s. 406 of the Penal Code. *Held*, the conviction was illegal. There must be an entrusting of the accused with the property, and that he dishonestly misappropriated it; there must be an intention on the part of the accused to cause wrongful gain or wrongful loss. *QUEEN v. RAJ KRISHNA BISWAS*, [viii Ap. 1

—, ss. 406, 407, 408 — *Criminal breach of trust.*] The prisoner, a gomasta, took from his employers, between 15th April and 30th June, sums amounting to Rs. 600, for the purchase of wood. During that period he supplied wood to the value of Rs. 234, but the prosecutor alleged that most of that was to be set off against balance to the debit of the prisoner for the year before, and that the value of the firewood was, as a fact, only Rs. 84. The prisoner was charged with criminal breach of trust as a servant. The defence was, that he had purchased wood and made advances on that account; but this defence was proved to be false. The Magistrate convicted him, but the Judge held it was merely a failure to account, and acquitted the prisoner. *Held*, the prisoner was guilty of criminal breach of trust. *WATSON v. GOLAB KHAN* — — — i S.N. xxi

—, s. 419.

See FALSE PERSONATION.

—, s. 424.

See PARTNERSHIP PROPERTY.

—, s. 425.

See MISCHIEF.

2. — *Cattle straying — Trespass.*] Mere neglect on the part of an owner of cattle to keep them from straying into fields, is not causing cattle to enter a compound within the meaning of s. 425 of the Penal Code. That section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that by so doing he was likely to cause damage. *FORBES v. GIRISH CHANDRA BHUTACHARJEE*, [vi Ap. 3

—, s. 441.

See TRESPASS.

—, s. 456.

See REVISION.

—, s. 457.

See REVISION.

2. — *Jurisdiction of Magistrate—Commitment to Sessions — Criminal Procedure Code (Act XXV of 1861), ss. 427, 435.*] The Sessions Judge has no power to commit to the sessions a case in which persons were convicted by the Deputy Magistrate of an offence

PENAL CODE, s. 457—continued.

under s. 457 of the Penal Code: such a case being one triable by the Deputy Magistrate, ss. 427 and 435 of Act XXV of 1861 do not apply. *QUEEN v. HAKIM SIRDAR* — ii S. N. ii —, s. 498 — *Enticing away married woman — Presumption of marriage—Onus probandi.*] In a charge under s. 498 of the Penal Code, the proof that the woman and a man other than the accused were living together, is sufficient to throw the burthen of proof on the accused that they were not man and wife. *QUEEN v. WAZIRA* — — — viii Ap. 62

—, s. 499.

See DEFAMATION.

—, s. 511.

See ATTEMPT TO COMMIT OFFENCE. SENTENCE.

PENALTY.

See INTEREST.

PERFORMANCE OF HUSBAND'S SHRADH.

See HINDU LAW, ALIENATION.

PERJURY.

See APPEAL IN CRIMINAL CASES.

FALSE EVIDENCE.

SANCTION TO PROSECUTION.

PERMANENT SETTLEMENT, DISTRICTS TO WHICH IT HAS NOT BEEN EXTENDED.

See ACT X OF 1859, ss. 15 AND 16.

PERMISSIVE POSSESSION.

See RIGHT OF OCCUPANCY.

PERPETUITIES.

See HINDU LAW, WILL.

PERSONAL DECREE.

See HINDU LAW, WIDOW. HUSBAND AND WIFE.

PETITION FOR ADMINISTRATION SUMMONS.

See ADMINISTRATION, SUIT FOR.

PETITION, MISSTATEMENT IN.

See PRIVY COUNCIL, PRACTICE OF.

PETITION, POWER TO ALLOW WITHDRAWAL OF.

See INSOLVENT ACT, s. 7.

PETITION, POWER TO SET ASIDE ORDER DISMISSING.

See INSOLVENT ACT, s. 7.

PLAINT.

See MULTIFARIOUSNESS.

RELIEF.

STAMP ACT XXVI OF 1867.

2. — *Form of plaint—Suit to remove bunds on river.*] How a plaint should be framed in a suit for removal of certain bunds which interrupted the plaintiff's right to a flow of water from a river, considered. *COURT OF WARDS v. LILANUND SINGH* — — — iv Ap. 30

3. — *Suit by a firm.*] *Per* PEACOCK, C.J.—A suit by a firm should not be brought in the name of the firm, but in the names of the members who constitute the firm. *PULIN BEHARI SEN v. WATSON* — — — Sup. Vol. 904

4. — *Verification and signature of plaint—Partners.*] Where the plaintiffs described them-

PLAINT—continued.

selves as lately carrying on business under the name of *C. & Co.*—*held*, that there was no irregularity in the plaint being signed by *C. & Co.*, and verified only by *A. B.*, one of the partners. *LACHLAN v. SHEKH ABDULLA*,
[v Ap. 89]

5. — *Verification of plaint, and signature by one partner of firm—Act VIII of 1859, s. 27—Practice.* By the practice of the Court, in a suit brought by a firm, one partner can, without having obtained special leave, verify the plaint on his own behalf and also on behalf of his co-partners. *Quere.*—Whether such a practice is correct, or ought to be allowed to continue? *RAMCHUNDER v. CHOONEELALL*,
[xii 35]

6. — *Non-verification of plaint—Benami mortgage.* In a suit for possession after foreclosure, defendants urged that *C.* (and not *A.* and *B.*, the plaintiffs) was the actual mortgagee. This was denied by *A.* and *B.*, who obtained a decree. In a subsequent suit brought by the representatives of *A.* and *B.* for mesne profits, they, in conjunction with *C.*, urged that *C.* was the real mortgagee; and *C.* was made a co-plaintiff, but he did not verify the plaint. A decree was given for mesne profits in favour of *C.*, the plaintiff. *Held*, that the fact that *C.* had not verified the plaint was no sufficient ground for dismissing the suit. Decree affirmed. *ROY MOHANLALL MITTREA v. BISHNU CHANDRA CHATTERJEE* — i A. C. 100

7. — *Suit against a corporation or company—Act VIII of 1859, s. 26.* A plaint described the defendants as *C. S.*, Deputy Agent of the *E. I. R. Company*, and *W. B. L.*, District Engineer of Rajmehal and Beerbhoom, who were made joint defendants. The real defendants were the *E. I. R. Company*. *Held*, the plaint did not contain the description of the defendants under s. 26, Act VIII of 1859. The Company should be sued in its corporate name. *RAMDAS SEN v. COLLECTOR OF MOORSHE-DABAD* — — — — — ii S. N. vi

8. — *Act VIII of 1859, s. 26—Description of defendant—Title of honor.* The object of s. 26, Act VIII of 1859, is to identify the parties to the suit; and where it was clear on the defendant's own admission that the right party was sued, an objection by the defendant that the plaint was bad, as it omitted to style him "*Roy Bahadoor*," was overruled. *KISSEN CHAND GOLACHA v. MEGRAJ KUTUBIA ROY*,
[xii 445 note]

9. — *Act VIII of 1859, s. 26—Titles of honor—Description of the defendant.* Where the Government has recognized a person as having a right to bear particular titles, a plaint in a suit against such person does not contain "the description of the defendant" in accordance with s. 26 of Act VIII of 1859, if such titles are omitted. In such a case the plaintiff should, on the objection being taken by the defendant, be ordered to amend the plaint; and if such order is not complied with, the

PLAINT—continued.

plaint should be rejected. *MAHARAJA OF VIZIANAGRAM v. LAKSHMI CHALLAYA*,
[xii P. C. 443]

10. — *Amending plaint—Appellate Court.* A plaint cannot be amended in an Appellate Court. *ABDOOL GUFFOOR v. MUSSAMUT NUR BANU* — — — — — i A. C. 78

11. — An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint. *COLVIN, COWIE v. ELIAS* — — — — — ii A. C. 212

12. — *Amendment of plaint—Act VIII of 1859.* The Court has power to amend a plaint after it has been filed, although no express power to do so is given by Act VIII of 1859. Under Act VIII of 1859, the Court has power to make all such amendments, first in the plaint, and afterwards in the issues, as may be necessary, in order to bring about a fair and proper trial of the matter which the plaintiff comes into Court to have tried. *GABIND CHANDRA DUTT v. GANGA DHYE*; and *NALIT MOHUN DAS v. GANGA DHYE* — — — — — vii 333

13. — *Striking names out of—Amending issues.* Four plaintiffs sued as partners; but it was found, during the trial, that they were not all partners at the time the cause of action accrued; and the Judge thereupon amended the issue which had been raised on that point, and raised the question whether the plaintiffs were or were not partners. And it being decided in the negative, the Judge ordered two of the plaintiffs' names to be struck out of the plaint, and he gave a decree in favour of the other plaintiffs. *Held*, that the Judge acted rightly in amending the issue, but that he should have done so without striking the names of the plaintiffs out of the plaint. *EAST INDIA RAILWAY COMPANY v. JORDAN* — — — — — iv O. C. 97

14. — *Amendment of plaint—Substitution of parties as defendants.* In an application to amend a plaint by substitution of the name of a firm for the Official Assignee as defendants, it was shown that the firm had been adjudicated insolvent, and one of them had obtained his permanent discharge; that the cause of action arose prior to the insolvency; and that no written statements had been filed. The application was granted, the costs to be paid by the plaintiff. *DELHI AND LONDON BANK v. MILLER* — — — — — vii Ap. 65

15. — *Issues—Amendment of plaint—Variance between case in plaint and evidence.* The plaintiffs sued the defendants for damages for breach of contract, alleging in their plaint that they had agreed to sell, and the defendants to purchase, certain indigo seed, but that the defendants had refused to take delivery, although the plaintiffs were ready and willing to deliver the same. Upon the evidence of the plaintiffs, it appeared that there was no contract as alleged in the plaint, but the contract, as stated by them, was, that they (the plaintiffs) were to purchase seeds as agents for the defendants. The Judge dismissed the suit on the ground that the plaintiffs were

PLAINT—continued.

bound to prove their case as stated in the plaint. *Held*, that the suit ought not to have been dismissed on that ground. The issues raised admitted of the true question being tried, *viz.*, whether, under the circumstances, the defendants were liable to pay the price of the seed; and if they did not, the Court ought to have amended the issues, or framed additional ones. The object of the plaint is merely to bring the matter in dispute before the Court, but it is for the Court, upon the statements before it, to determine the real issue between the parties. **ARBUTHNOT v. BETTS** - - - - vi 273

16. — *Variance between case in plaint and evidence—Raising ground not taken in plaint.* The plaintiff, a Hindu, sued to set aside a certain alienation, on the ground that the alienor was an illegitimate son of the plaintiff's grandfather, and therefore had no interest in the property. Not being able to substantiate this ground in the first Court, the plaintiff, on appeal, raised a new ground, *viz.*, that the alienation was bad, because, under the Mitakshara law, the owner of a share in a joint ancestral estate is not competent to alienate his share without the consent of the other heirs. *Held*, that such variance could not be allowed, and that the plaintiff must prove his case as laid in the plaint. **SRI PRASAD v. RAJ GURU TRIAMBUNATH DEO** - - - vi 555

17. — *Variance between pleading and proof.* At a sale held under Beng. Act VIII of 1865, the defendant purchased a shikmi tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands, and hence the suit by the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Raja of Tippera, and that the plaintiff was owner thereof, partly by purchase, and partly by inheritance. The lower Appellate Court found as a fact that the late shikmidar, and not the Raja, had granted the lands in dispute as bramatar, but not in favor of the person through whom the plaintiff claimed. The Court, however, passed a decree in favor of the plaintiff, as he had been unlawfully dispossessed. *Held*, that the plaintiff having failed to prove the case as set up by him, and upon which he claimed, could not be entitled to a decree upon grounds other than those stated in the plaint. **ISWAR CHANDRA CHUCKERBUTTY v. BISTU CHANDRA CHUCKERBUTTY** iii Ap. 97

18. — The plaintiff alleged in his plaint that the defendant had erected a hut, or *challa*, upon ground to which he, the plaintiff, was separately entitled. The lower Appellate Court found that the land in dispute was the joint property of both parties, and that the defendant was not at liberty to erect the hut without the express permission of the plaintiff, and ordered the demolition of the *challa*. *Held*, that the plaintiff was not entitled to a judgment upon a ground which was inconsistent with the case set out in his plaint. **NABIN CHANDRA MITTER v. MAHES CHANDRA MITTER** - - - - iii Ap. 3

PLAINT—continued.

19. — *Amendment of.* Where a suit was instituted under Act V of 1866 for the sum due on two promissory notes, and the defendant was afterwards allowed to come in and defend, and written statements were filed, and the plaintiff's written statement set out all the facts under which the notes were given, it was found that the items of the account were not properly in issue. The Court allowed the plaint to be amended and an issue to be framed as to the amount due in respect of the consideration for the note. **JOSEPH v. SOLANO**, [ix 441

20. — *Amendment of.* Where in the plaint the relief sought for was possession and mesne profits, and the plaint was in the course of the suit amended, and an additional stamp paid, so that the suit became one for resumption,—*held*, the amendment was improperly made, and the suit must proceed as a suit for possession and mesne profits. **GOBINDO MAHAPATRO v. GOPEENATH PUNDIT** - Sup. Vol. 581

21. — *Amendment of plaint—Raising new issue—Pre-emption.* Where a plaintiff claimed in his plaint a right of pre-emption as co-partner of the vendor,—*held*, that he could not be entitled to a decree on the ground of vicinage. **KUNJABEHARI LAL v. GIRIDHARI LAL** - - - - i S. N. xii
SHIU SUHAI MULLICK v. LALA HARI SUHAI SINGH - - - - iii Ap. 142

22. — *Taking plaint off the file—Indefiniteness—Omission to show suit not barred.* A plaint which merely stated that the cause of action arose previous to 21st August, 1869, and which did not show that the suit was not barred by limitation, was ordered to be taken off the file. **SONAMULL v. SUDARAM ROTTI**, [viii Ap. 23

23. — *Return and amendment of plaint—Mistake in plaint.* A suit cannot be dismissed merely on the grounds that the plaint did not contain a specification of the land in the defendant's possession, and that there was an error in the plaint in the description of the defendant's residence. **REZA ALI v. PURANAND CHUCKERBUTTY** - - - vi Ap. 84

24. — *Return of plaint—Want of jurisdiction.* If a party bring a suit in a Court which, on his own showing, has no jurisdiction to try it, he cannot, after failing in that Court, have the plaint returned to him in order that he may file it in a proper Court. **IN RE TUFANI SINGH** - - - - vi Ap. 141

25. — *Admission of plaint—Holiday—Stamp duty.* The reception of a plaint for arrears of rent by the Collector on Good Friday, although by the Circular Order of the Board of Revenue such day is an authorized holiday, is not illegal. There is no illegality in the reception of a plaint engrossed on insufficient stamp paper, if the full amount of the stamp duty has been paid at the time. **GOBIND KUMAR CHOWDHRY v. HARGOPAL NAG** - iii Ap. 72

PLAINT, ORDER REJECTING, FOR UNDER-VALUATION.

See APPEAL.

PLAINT, REJECTION OF.*See* LIBEL.**PLAINT, VERIFICATION OF.***See* FALSE EVIDENCE.**PLAINTIFF, IMPRISONMENT OF, FOR COSTS OF SUIT.***See* CIVIL PROCEDURE CODE, s. 281.**PLAINTIFF RESIDING OUT OF JURISDICTION.***See* CIVIL PROCEDURE CODE, s. 34.**PLEA OF GUILTY ON ONE OF TWO CONTRADICTORY CHARGES.***See* FALSE EVIDENCE.

PLEADER—*Act XX of 1865, s. 12—Small Cause Court, Calcutta.*] A pleader holding a certificate under s. 12 of Act XX of 1865 is not thereby entitled to be admitted to practise in the Court of Small Causes at Calcutta. *IN RE SHASHI BHUSHAN BHADURY* - - - 1 A. C. 45

2. — *Prosecution—Right to appear in Criminal Courts.*] A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts. *CHANDI CHARAN CHATTERJEE v. CHANDRA KUMAR GHOSE*, [v Ap. 70

3. — *Private prosecutor—Criminal reference to High Court—Criminal Procedure Code (Act XXV of 1861), s. 434.*] Private prosecutor not allowed to appear by pleader on a reference to the High Court under s. 434 of the Criminal Procedure Code. *QUEEN v. RAM-JAI MAZUMDAR* - - - vi Ap. 46

4. — *Suspension of, from practice—Unprofessional conduct—Commission to mookhtears—Act XX of 1865—Criminal offence.*] A., a pleader, was engaged by B., who was acting on behalf of C., to defend certain persons charged with the offences of rioting and of having caused grievous hurt. Two of the accused persons were relatives of C. A. agreed with B. that, if all the accused were acquitted, his fee was to be Rs. 500; if the two, who were the relatives of C., were acquitted, then he was to receive Rs. 250; but in the event of none of the accused being acquitted, he was to receive only Rs. 40. Before the trial B. paid A. Rs. 475; this having come to the knowledge of C., he telegraphed, saying that the fee was exorbitant, and A., upon being remonstrated with, handed over Rs. 250 to a banker to be placed to his (A.'s) credit. A. alleged that, out of Rs. 225 which remained with him, he paid Rs. 140 to B. as commission, and that Rs. 25 was paid to his mohurir. *Held*, that A. was guilty of fraudulent and grossly improper conduct. He was suspended from practising for the period of one year. *Per* PONTIFEX, J.—If a mookhtear, paid for his services by his employer, were to receive in addition, without the knowledge of his employer, a percentage or commission from the pleader, he would be answerable, not only in the Civil Court, but also in the Criminal Court, to a charge of obtaining money improperly from his employer. *IN THE MATTER OF PEARY MOHUN GOOHO* - - - xi 319

PLEADER, WITHDRAWAL OF LICENSE TO PRACTISE AS.*See* RECORDERS' ACT.

SUPERINTENDENCE OF HIGH COURT.

PLEADINGS.*See* ADMISSION.

ESTOPPEL.

PLAINT.

VENDOR AND PURCHASER.

WRITTEN STATEMENT.

POLICE ENQUIRY—*Criminal Procedure Code (Act XXV of 1861), ss. 133, 180—Power of Magistrate.*] *Held per* GLOVER, J.—Under s. 133, Act XXV of 1861, a Magistrate may order a police enquiry "into any offence punishable under the Penal Code." *Held per* LOCH, J.—The Magistrate has no authority to order a police enquiry in a case under Ch. XIV of the Criminal Procedure Code, s. 180 not having been extended to cases under that chapter. *QUEEN v. FOKTU SHAH* - - - ii S. N. vi

POLICE MAGISTRATE.*See* HIGH COURTS' CRIMINAL PROCEDURE ACT.

POLICE MAGISTRATE, POWER OF—*Beng. Act IV of 1866, s. 26—Penal Code (Act XLV of 1860), s. 116.*] A Police Magistrate has power to convict summarily under Beng. Act IV of 1866, s. 26, for an offence punishable under s. 116 of the Penal Code. *QUEEN v. MAHBUB KHAN* - - - i O. Cr. 39

POLICE OFFICERS—*Act V of 1861, ss. 8 and 29—Offence committed by police officer while under suspension.*] A police officer was suspended by the District Superintendent and ordered to remain in the police lines, which he did not do. He was arrested and convicted under s. 29, Act V of 1861, for disobeying the orders of his superior officer, and withdrawing from his duties without permission. *Held*, that his conviction was illegal; after suspension he was no longer a police officer under s. 8 of the Act, and therefore could not be legally convicted under s. 29. *QUEEN v. DINANATH GANGOOLY* - - - - - viii Ap. 58

2. — *Act V of 1861, s. 29—Neglect to act on information while on other duty.*] A police officer charged under s. 29, Act V of 1861, with a violation of his duties in not acting on information given to him of the likelihood of a breach of the peace, which afterwards actually occurred, set up in defence that he was, when he received the information, engaged *bond fide* in duties as a police officer in regard to another offence. He was, however, found guilty and convicted. *Held*, the conviction was illegal. For a conviction under s. 29, more than mere neglect of duty must be shown, a deliberate and intentional violation of his duty is necessary. *QUEEN v. RADHU SING* viii Ap. 60

POLICE OFFICERS, ANSWERS BY PRISONER TO.*See* EVIDENCE, CRIMINAL CASES.

POLICE REPORT.*See* COMPLAINT.

EVIDENCE, CRIMINAL CASES.

NUISANCE.

RECOGNIZANCE TO KEEP THE
PEACE.**POLITICAL AGENT, ORDER MADE BY, IN HIS
EXECUTIVE CAPACITY.***See* ACT XVIII OF 1850.**POLLIAM.***See* UNSETTLED POLLIAM.**POSSESSION.***See* CIVIL PROCEDURE CODE, s. 230.

EVIDENCE, CIVIL CASES.

LIMITATION ACT XIV OF 1859,
s. 1. CL. 12; s. 15.

ONUS PROBANDI.

RENT, SUIT FOR.

TITLE.

2. — Title — Act IV of 1840 — Jalhar.]

A. originally owned two zemindaries between which lay a bil, or marsh, of which he also owned the fisheries. One of the zemindaries was sold and purchased by B., but the bil fisheries still continued with the remaining zemindary held by A. After the sale, certain lands reclaimed from the bil were for some years held by B. as part of his purchased zemindary. A. instituted a summary suit under Act IV of 1840, and was by an order of the Magistrate put in possession of these lands. B. brought a regular suit against A. to recover the lands and set aside his order. *Held* (reversing the decisions of the Courts below) that it was necessary for B. to show a better title to the land than A. could produce. It was not enough for him to prove possession anterior to the Magistrate's order under Act IV of 1840. The presumption was, that the land of the bil belonged to A., who had admittedly owned both estates before, and had retained the fisheries of the bil after the auction-sale. B. ought to have shown when and how, if at all, the right to the fisheries and the right to the soil were severed. *BARODA KANT ROY v. CHUNDRA COOMAR ROY* ii P. C. 1

3. — Title — Evidence — Undisturbed possession.] *Held*, on the evidence in the case, that defendants' long possession was confirmatory of their title based on a mortgage bond of old date, and that plaintiff's suit for possession was rightly dismissed. *DEVAJI GAYAJI v. GODABHAI GODBHAI* — ii P. C. 85

4. — Mokurari title — Evidence.] Mere proof of possession for more than twelve years does not amount to proof of a mokurari title. *SHIU DAYAL PURI v. THAKUR MAHABIR PRASAD* — — — — ii Ap. 8

5. — Evidence — Title — Presumption.] A person in possession of property ought to be presumed to be in lawful possession until the contrary be shown. Beyond this possession is only evidence to be taken conjointly with other evidence to establish or impugn a title. *SELAM SHEIKH v. BAIDONATH GHATAK*,
[iii A. C. 312

POSSESSION—continued.

6. — Evidence — Title.] In a suit for possession of property the plaintiff relied on his previous twelve years' possession, and gave no further evidence of his title. *Held*, that a previous possession for twelve years of the property sought to be recovered did not dispense with the necessity which lay on the plaintiff to prove his title to that property. He is not on that fact alone entitled to be replaced in possession of the property without regard to any right which may be alleged by the defendant. *LAKHI KUMAR v. RAM DUTT CHOWDHRY* — — — — iii Ap. 44

7. — Adverse possession — Purchaser at sale in execution of decree — Mortgage.] The possession of a purchaser at a sale in execution of decree, without notice of a mortgage of the property, is adverse to the mortgagee. *ANAND MAYI DASI v. DHARENDRA CHUNDRA MOOKERJEE* — — — — viii P. C. 123

8. — Adverse possession — Limitation — Title.] Adverse possession for more than twelve years not only bars remedy but extinguishes right, and confers title on the party holding such adverse possession. *BARODAKANT ROY v. PRANKRISHNA PAROI*,
[iii A. C. 243

9. — Title by length of possession — Adverse possession — Limitation — Unexecuted decree.] In 1859 A. obtained a decree for possession of land against B., but no proceedings in execution were taken, and B. continued in possession. In 1869 C., having purchased the right and interests of A. in the decree, forcibly dispossessed B., who had been twelve years in possession. B. now brought this suit against C. to recover possession. *Held*, the execution of the decree of 1859 being barred, and B. having been twelve years in possession, he was entitled to recover. Adverse possession which bars the remedy also transfers the right. *AMIRUNNISA BEGUM v. UMAR KHAN* viii 640

10. — Possession — Evidence — Title] A. brought a suit under Act X of 1859 to recover arrears of rent in respect of certain lands. B. was made a party under s. 77: but A. obtained a decree and ousted B. B. therefore sued A. in the Civil Court for possession and declaration of his right to the lands, alleging that they were his lakhiraj and devatra lands. The High Court *held*, that proof by B. of possession for twelve years was sufficient, and gave him a decree. *BISWANATH v. BRAJAMOHAN CHUCKERBUTTY* — — — — i S. N. i

11. — Lost records — Proof of long possession.] The plaintiff claimed a right of preemption as safee-sharikh, or partner in the thing sold. The Court of first instance gave him a decree on the ground of long possession as proprietor. The Lower Appellate Court reversed the decision on the ground that the plaintiff's title depended on a deed of purchase, which it was admitted had been set aside in a former suit in 1855, and that the plaintiff had failed to show that the decision in that suit had been reversed. The plaintiff proved

POSSESSION—continued.

that he had preferred an appeal from that decision, and alleged that it had been overruled; but there was no proof of the result of the appeal, as the records of that suit had been burnt in the mutiny. *Held* on appeal to the High Court, that, under the circumstances, proof of long possession as proprietor was sufficient. **TUFANI SING v. DURGABAN**,
[iv Ap. 21]

12. — *Title—Evidence—Act XIV of 1859, s. 15.* In a suit for recovery of possession of certain bramatar land, of which the defendant had dispossessed the plaintiffs by virtue of an award passed under s. 15, Act XIV of 1859, declaring his right by purchase, the defence set up was that the deed of purchase was a forgery, and that the suit was barred by lapse of time. *Held*, that although the plaintiffs failed to prove their title-deeds, yet their title was sufficiently established by oral evidence of long possession prior to their dispossession two or three years previous to suit. **RAM CHANDRA CHOWDHRY v. BRAJANATH SARMA** — — — — — iii Ap. 109

13. — *Evidence—Thakbust award.* A thakbust award of boundary would, in any case, be material evidence of possession. **PRAHLAD SEN v. RAJENDRA KISHOR SINGH** — — — — — ii P. C. 3

14. — *Evidence—Ownership.* In special appeal, the High Court *held*, that evidence which did not allude to any specific acts of ownership was not sufficient evidence to prove possession. The finding of the fact of possession by the lower Appellate Court upon such evidence reversed in special appeal. **JAGABANDHU DAS GAJENDRA MAHAPATRA v. DINABANDHU DAS GAJENDRA MAHAPATRA** — — — — — ii Ap. 30

15. — *Fact of possession—Evidence.* A statement by a witness that a party is in possession is, in point of law, admissible evidence of the fact that such party was in possession. **MANIRAM DEB v. DEBI CHARAN DEB**,
[iv F. B. 97]

16. — *Lessee—Suit for rent.* A suit for rent will not lie where the lessee has never obtained possession of the land leased to him. **BULLEN v. LALIT JHA** — — — — — iii Ap. 119

17. — *Suit for possession—Limitation.* In a suit for possession of certain lands purchased by plaintiff at a sale in execution of a decree of the Sudder Ameen's Court, the lower Court held that "possession by proclamation of sale, through the Sudder Ameen's Court, was possession through the Court," and that the suit being brought within twelve years of that proclamation was in time. *Held* on appeal, that such imaginary possession was no possession at all, and that the suit was barred by limitation. **JOWHER ALY v. RAM CHAND**.
[ii Ap. 29]

18. — *Suit for possession—Proof of specific title.* Where a plaintiff sued to recover possession of certain lands under a maurasi patta which had been lost, and proved ten years'

POSSESSION—continued.

possession,—*held*, that such possession alone would not entitle him to recover possession of the land, but that he must prove the specific title set up by him. **BHOLAI MUNDAL v. JARIF GAZI** — — — — — iii Ap. 93

19. — *Suit for possession—Sanad—Evidence—Title.* In a suit for recovery of possession of certain land which the plaintiff claimed under and by virtue of a sanad (grant) from the zemindar, and from which he had been dispossessed by the defendants, the lower Appellate Court held that the execution of the sanad was not satisfactorily proved, but that it was not a forgery, and that there was the corroborative evidence (such as the dakhilas produced before it) to prove the case of the plaintiff. *Held*, that when a claim is based upon a sanad, and the plaintiff fails to prove the execution of the sanad itself, he may prove his claim by other means. In a suit for mere possession it is unnecessary to state or prove a particular title. **RASH BEHARI LAL SING v. NABATI PODDAR**,
[iii A. C. 99]

20. — *Suit for possession—Title—Evidence.* Unless a plaintiff can prove the particular title set up by him he is not entitled to a decree for possession. **RAMDHAN CHUCKERBUTTY v. KOMALTARA** — — — — — iii A. C. 99 note

21. — *Suit based on allegation of possession—Evidence.* A suit based upon an allegation of possession must be at once dismissed if the plaintiff be shown to be out of possession. **SUKRAM v. KALA KAHAR** — — — — — iii A. C. 105

POSSESSION, EXECUTION OF BILL OF SALE WITHOUT DELIVERY OF.

See VENDOR AND PURCHASER.

POSSESSION OF GOODS.

See BAILEMENT.

CONTRACT ACT, s. 108.

POSSESSION, ORDER OF CRIMINAL COURT AS TO—Criminal Procedure Code (Act XXV of 1861), s. 318—Act X of 1872, s. 530—Certificate of administration—Act XXVII of 1860. *A. and B. had a dispute about possession of a certain muth. A. was declared by the Magistrate, under s. 318 of the Criminal Procedure Code, to be in possession. Subsequently, B. got a certificate under Act XXVII of 1860, and applied to the Magistrate for possession, which was given to him. Held, that the Magistrate's order giving possession to B. was irregular, and must be set aside.* **DHUNRAJ GIRI GOSWAMI v. SRIPATI GIRI GOSWAMI** — — — — — ii A. Cr. 27

2. — *Suit for declaration of title.* A plaintiff in a civil suit, brought for confirmation of his possession by a declaration of his title to certain land, obtained, pending his suit, an order from the Magistrate under s. 318 of the Criminal Procedure Code, that he should be maintained in possession until ousted by due course of law. The suit was dismissed, the plaintiff failing to prove his title; and the defendants then applied to the High Court under s. 404 of the Criminal Procedure Code,

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

to set aside the Magistrate's order, and put them in possession. *Held*, that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected. **JUGGESH PRAKASH GANGULI v. NILKAMAL MOOKERJEE**, [iii A. C. 57]

3. — *Disobedience of orders.* Where an order under s. 318 of the Criminal Procedure Code was made between A. on the one side, and B. and the three tenants of B. on the other, declaring that A. was in possession of the property in dispute,—*held*, that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B. could not be criminally punished for disobeying the order in question. **IN THE MATTER OF GOPAL BURNABAR**, [iii A. Cr. 13]

4. — *Jurisdiction of Magistrate—Likelihood of a breach of the peace.* A Magistrate has no power to decide a question of possession under s. 318, Act XXV of 1861, until he has recorded a proceeding, stating the grounds of his being satisfied that the dispute for possession is likely to induce a breach of the peace. **IN THE MATTER OF KASHI KISHOR ROY v. TABINI KANT LAHORI** — — — [iii A. Cr. 76]

5. — *Breach of the peace—Actual possession—Recognizance to keep peace.* The possession of a master by his servant—of a landlord by his immediate tenant, the person who pays rent to him—of the person who has the property in the land by the usufructuary, come within the meaning of the words "actual possession" in s. 318 of the Code of Criminal Procedure. Their meaning is not limited to bodily possession. But a person is not in "actual possession" where the rents are paid by the actual occupier, not to him, but to an intermediate holder. All that is required to make a proceeding under s. 318 proper and valid, is, that the Magistrate should be satisfied that a dispute exists, and he is to record the grounds of his being so satisfied. There is nothing which defines upon what grounds he shall be satisfied, or limits him to being satisfied by evidence given before him. If a Magistrate is satisfied that the circumstances of a case require it, he may make an order under s. 318, notwithstanding that he has taken recognizances under s. 282. **IN THE MATTER OF THE PETITION OF SUTHERLAND** — — — [ix 239]

6. — *Parties to proceedings—Service of notice—Co-sharers.* In a proceeding under s. 318, Act XXV of 1861, there is nothing in the law which makes it necessary for the Magistrate to serve notice on all the co-sharers in an estate which may form the subject of the dispute. **IN THE MATTER OF THE PETITION OF GABINDA CHANDRA GHOSE** — — — [ix Ap. 39]

7. — *Evidence—Likelihood of breach of peace—Police report.* A Magistrate, before proceeding under s. 318 of the Criminal Procedure Code, must be satisfied by evidence

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

that a dispute likely to induce a breach of the peace exists. A police report is not evidence. **IN THE MATTER OF THE PETITION OF BHADRESWARI CHOWDRAIN** — — — [vii 229]

8. — *Report of police officer—Evidence.* *Semble*.—The report of a police officer alone is not sufficient evidence on which to base proceeding under s. 318, Act XXV of 1861. **IN THE MATTER OF THE PETITION OF SHAMA-SANKAR MAZUMDAR** — — — [ix Ap. 45]
See also **ABHAYA CHARAN CHOWDREY v. BRAE** — — — [vi Ap. 148]
QUEEN v. BHYRO DAYAL SING [iii A. Cr. 4]

9. — *Evidence on oath—Actual possession.* In a proceeding under s. 318 of the Criminal Procedure Code, to determine the right of actual possession, it is necessary that the evidence should be taken upon oath. **QUEEN v. KALI CHANDRA SHAH** — — — [vii 222]

10. — But it appears not to be absolutely necessary to examine witnesses at all. *Semble*.—If examined, the evidence should be on oath. **QUEEN v. BALLABH KANT BHATTACHARJEE**, [vii 224 note]

11. — *Obstructing a road.* Where A. complained merely to the Magistrate that "a certain road had been obstructed by B. and others,"—*held*, that the Magistrate was not bound to enquire into the matter under s. 320 of Act XXV of 1861. **QUEEN v. RASSUL NUSHY**, [ii Ap. 9]

12. — *Obstructing road—Suit for exclusive possession.* The Magistrate had, on the complaint of the defendant, passed an order under s. 320 of the Criminal Procedure Code, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff, accordingly, brought his suit in the Munsif's Court to recover possession of the land. The Munsif gave him a decree for exclusive possession of the land. On appeal, the Judge held that the Munsif had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed in special appeal, and the case remanded to the Judge to try the issue, whether the plaintiff was entitled to the exclusive use of the land. **MAHES CHANDRA MOOKERJEE v. RAMUTAM PALIT** — — — [v Ap. 68]

POST NUPTIAL CONTRACT.

See CONTRACT ACT, ss. 24, 25.

POTTA, CONSTRUCTION OF.

See ENHANCEMENT OF RENT.

2. — *Istemrari—Hereditary tenure.* Where, by an old potta, lands forming part of a zemindari had been leased at a specified rent, but there were no words in the potta importing the hereditary and istemrari character of the tenure,—*held*, that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the des-

POTTA, CONSTRUCTION OF—continued.

cent of tenure from father to son, whence that hereditary and istemrari character might be legally presumed. *SATYA SARAN GHOSAL v. MAHESH CHANDRA MITTER* - ii P. C. 23

3. — *Perpetual lease—Suit for enhancement of rent.*] A zemindar in the district of Cuttack granted the following lease: "In the Chawdnak 1236 Amli, 17th day of the month of Baisa, Sri Hari Chuckerbutty grants to Nared Manti this istemrari (permanent) potta. For that I execute istemrari potta of my Khardigi Ayma in Mouza Bhimpore. Jote land, measuring four bigas, being previously to this in our occupation, you will cultivate and cause to be cultivated hereafter. Mokurari (fixed) rent at Rs. 8-12 sicca you will pay from year to year. In case of flood or drought you will be allowed a reduction of rent according as such reduction will be allowed to others. To this Hari Chuckerbutty assents." A subsequent purchaser of the zemindari right obtained a fresh settlement of the zemindari under Government. The son and grandson of the grantee held successively under the lease. In a suit by the zemindar against the holder for enhancement of rent,—*held*, that the potta was a hereditary lease fixing the rent in perpetuity, and that it was binding on the representatives of the grantor. *KARUNAKAR MAHATI v. NILADHEO CHOWDHRY* - - - v 652

4. — *Mokurari istemrari—Hereditary right.*] The words "mokurari istemrari" contained in a potta must be taken in themselves to convey an hereditary right in perpetuity. *MUSST. LAKHU COWAR v. ROY HARI KRISHNA SINGH* - - - iii A. C. 226

5. — *Quære.*—Whether, in the absence of any usage, the words "mokurari istemrari" mean permanent during the life of the grantee, or permanent as regards hereditary descent? *LILANUND SINGH v. THAKUR MUNOBUJUN SINGH* - - - xiii P. C. 124

POTTA, TENDER OF.

See KABULIAT, SUIT FOR.

PRACTICE.

See ADMINISTRATION, SUIT FOR.
BILLS OF EXCHANGE ACT.
COMMISSION.

COUNSEL.

DAMAGES, SUIT FOR.

DIVORCE ACT.

INSOLVENT ACT, ss. 9 AND 36.

LETTERS PATENT, CL. 15.

PLAINT.

PRIVY COUNCIL, PRACTICE OF.

RIGHT OF REPLY.

RIGHT TO BEGIN.

SUMMONS.

TAXATION OF BILL OF COSTS.

WRITTEN STATEMENT.

2. — *Setting down case in general cause list—Entering appearance.*] The Court has power to order a case to be set down at once in the general cause list, if the defendant enters appearance by his attorney before the time for appearance fixed in the summons has

PRACTICE—continued.

expired. When a defendant so appears the Registrar ought so to set down the case as a matter of course, or at least ask the Judge in Chambers whether he should do so or not. *CUMMING v. GREEN* - - - iv Ap. 75

3. — *Entitling affidavits.*] In showing cause against a *rule nisi* for a *mandamus* in proceedings under the Calcutta Municipal Act to obtain compensation from the Justices, the affidavits should be simply entitled "In the High Court." The affidavits, though wrongly entitled, were admitted. *JUSTICES OF THE PEACE FOR CALCUTTA v. ORIENTAL GAS COMPANY* - - - viii 438

4. — *Taking further evidence on hearing of motions—Oral evidence—Adjournment.*] There is nothing in the practice of the Court on the Original Side to prevent a Judge taking further evidence on the hearing of a motion either by affidavit, or *visu voce*, and the Court may adjourn the hearing for that purpose. *BAMASUNDARI DAS v. RAMNARAYAN MITTER*, [viii Ap. 65]

5. — *Affidavits on motion—Affidavits filed after adjournment for convenience of Counsel.*] The Court refused, without the consent of the other side, to allow an affidavit in support of a motion to be read, which had been filed after an adjournment granted for convenience of counsel. *COUBJON v. COUBJON* - ix Ap. 10
NEERUNJUN MOOKERJEE v. OOPENDRO NARAIN DEB - - - x 57

6. — *Hearing two counsel—Motions.*] It is not the practice to hear more than one counsel or vakeel in support of original motions or applications against which no cause is shown in the first instance. *IN THE MATTER OF THE PETITION OF BARODA SOONDREE DASSEE*, [Sup. Vol. 609]

7. — *Damages, assessment of.*] Practice of Original Side as to assessing the amount of damages discussed. *MANIRAM v. BIBI MASHIHAN* - - - iv Ap. 66

8. — *Appeal—Delivery of paper-books—Costs—Rule 49 of Original Side.*] Where the respondent has not delivered paper-books, as he is allowed to do by Rule 49 of the rules of the High Court. Original Jurisdiction, on default of the appellant to deliver them, and the appellant does not appear at the hearing, the appeal will be dismissed without costs. *HURBOSONDERY DOSSEE v. CALLYPUDO DUTT*, [xiv Ap. 11]

PRACTICE OF COURTS, IN INDIA.

See CONTRACT.

PRECEPT TO COLLECTOR UNDER REG. XLVIII OF 1793.

See LIMITATION ACT XIV OF 1859, s. 20.

PRE-EMPTION.

See MAHOMEDAN LAW. PRE-EMPTION.
VALUATION OF SUIT.

PRELIMINARY ENQUIRY.

See MAGISTRATE, POWERS OF.

PREScription—Evidence, ancient right — User.] No fixed period has been laid down within which a right by prescription may be gained in this country. The evidence must be such as to justify the Court in inferring the existence of a valid ancient right, having regard to the nature of that right and the circumstances under which it has been exercised. *KRISHNA MOHAN MOOKERJEE v. JAGANATH ROY JUGI* — — — ii A. C. 333

2. — No period has been definitely fixed to create a right of prescription. There is no decision which says either that a finding that the user has lasted for at least twelve years is necessary, or that such a finding of a user for twelve years would be conclusive. *RUPCHANDRA GHOSH v. RUPMANJARI DAS* iii A. C. 335

3. — *User—Ancient and uninterrupted right.]* A party claiming the right of user by prescription over the property of another must show not only that the right has existed from ancient days, but also that it has been exercised as of right, and has not been interrupted. *MULLIK JAWAD-UL-HUQ v. RAM PRASAD DAS* — — — — — iii A. C. 381

4. — *Permissive possession.]* To constitute a right by prescription, the possession must have been as of right. Mere permissive possession cannot be the basis of right of prescription. *ASKAR v. RAM MANIK ROY*, [v Ap. 13

5. — *Light and air—Easement—Presumption of lost Grant—Positive and negative servitudes—Obstruction—2 & 3 Will. IV., c. 71.]* In a suit to remove an obstruction to the enjoyment of light and air and for damages,—*held* by MARKBY, J., that, in cases where English law is applicable, the Law of Prescription is that existing in England prior to the passing of the Prescription Act. Although the enjoyment of light and air as of right for upwards of thirty years is evidence from which an enjoyment from time immemorial may be presumed, yet inasmuch as the period of legal memory is about 700 years, the claim by prescription in this country is defeated by the fact that English law has only been introduced here for about 200 years. Where an easement has been enjoyed for upwards of twenty years, the presumption of a grant is a question of fact, and not of law. Distinction drawn between positive and negative servitudes. *Held* by PEACOCK, C. J.—A right to air may be acquired by express grant, but it cannot be acquired merely by presumption arising from user, whether the presumption is a presumption of prescription or not. The only amount of light which can be claimed by prescription or by length of enjoyment, without an actual grant, is such an amount as is reasonably necessary for the convenient and comfortable habitation of the house. The uninterrupted enjoyment of light for twenty years acquiesced in by the owner of the servient tenement raises a presumption of right which, in the absence of any evidence to rebut it, ought to be acted upon by those who have to determine the facts. Such presumption is one of law, and not of fact. *Held* by

PREScription—continued.

NORMAN, J.—Servitudes are known and recognized both in Hindu and Mahomedan law. A right to the unobstructed access of light is not a property or interest in the light itself, nor a right to be enjoyed in or over the soil of the adjacent owner. By analogy to the Law of Limitation, an adverse and uninterrupted use of an easement for twenty years confers a right to it: therefore, where the access of light and air through the windows of a house has been enjoyed for twenty years, and there is nothing to rebut the presumption of title, the law implies an obligation on the part of an adjoining owner not to interrupt the free access of necessary light and air through such windows. *BAGRAM v. KHETTRANATH KARFORMAH* — — — — — iii O. C. 18

6. — *Light and air—Easement—Knowledge and acquiescence—2 & 3 Will. IV., c. 71.]* In a suit for enforcing the removal of an obstruction to the alleged right of the plaintiffs to the light and air through certain windows in a room of a house contiguous to the house of the defendants, it was proved that the plaintiffs had purchased the premises in 1847, and that the building of the room in which the windows in question were had been subsequently commenced in 1849; and the Judge of the Court below found on the evidence that the room and windows had been completed and in use for a period of twenty years prior to the date of suit, May 18th, 1870; that the plaintiffs had enjoyed the light and air through the windows for a period of twenty years without any interruption by the defendants; and it being proved that the defendants had by buildings obstructed the light and air coming to the plaintiffs' windows, he granted an injunction commanding the defendants to take down so much of the wall as rose to the height of more than five feet above the level of the plaintiffs' floor, and restraining them, the defendants, from continuing their building above the height of five feet. *Held*, on appeal, per COUCH, C. J.—By the English law before the Prescription Act (which is the law governing the case), the presumption of a grant, in the case of a claim to the access and use of light for a building, was a presumption of fact, the presumption being founded on the consent or acquiescence of the owner of the servient tenement. Acquiescence implies knowledge, and knowledge may be presumed where the owner is in possession. There must be knowledge for twenty years, at any rate; if the knowledge were for a lesser period, whether there was a grant, would be a question of fact, and no presumption could arise. The question of whether or not there was knowledge is one preliminary to the consideration whether or not a grant is to be presumed. *Held* on the evidence that there had been no knowledge on the part of the defendants during the whole time, and therefore there had not been a twenty years' enjoyment of the light and air with their acquiescence. *Held* per MARKBY, J.—The presumption of a lost grant is one of fact. An uninterrupted user

PREScription—continued.

for twenty years would be evidence from which, taken with other circumstances, it might be inferred that a grant had existed. No "patientia," or "submission" on the part of the defendants being shown so as to constitute an acknowledgment of the existence of the right of the plaintiffs to the light and air, the defendants were entitled to succeed. **BHUBAN MOHAN BANERJEE v. ELLIOTT** - vi 85

7.—*Held* on appeal to the Privy Council that the law of prescription applicable to India is the English law previous to the passing of the Prescription Act, 2 & 3 Will. IV, c. 71. In order to establish a right to light and air, an uninterrupted user of at least twenty years, with the acquiescence of the owner of the servient tenement, must be shown. In a suit to restrain the defendants from obstructing the light and air through certain windows of a house belonging to the plaintiffs, it was shown that the enjoyment of the alleged right began on 14th April, 1850, the windows then being in a sufficiently finished state to create the right. In March, 1870, the plaintiffs received notice from the defendants of their intention to erect a building which would have the effect of obstructing the passage of light and air through the plaintiffs' windows. The building was actually commenced on 23rd March, 1870, but it was not actually raised to such a height as to amount to an obstruction until some days after the twenty years had elapsed. *Held*, that there was not an enjoyment for twenty years with the acquiescence of the defendants such as entitled the plaintiffs to maintain the suit. *Quære*.—Whether proof of constructive knowledge on the part of the defendants would not be sufficient to show their acquiescence? **ELLIOTT v. BHOOBUN MOHUN BANERJEE** - - - xii P. C. 406

8.—*Light and air—Easement—Act IX of 1871, s. 21—Enjoyment "as of right"—Unity of possession—The English Prescription Act (2 & 3 Will. IV, c. 71), s. 3—Grant independent of user.* In a suit to restrain the defendant from obstructing the access of light and air through certain windows of the plaintiff's house, it appeared that both the tenements had formerly constituted the joint property of a Hindu family, and that in 1835 a partition took place among the various members composing it, by which the tenement in the occupation of the plaintiff became separated from that occupied by the defendant; that the latter property was, in 1860, purchased by the plaintiff jointly with one G., but, under the purchase the plaintiff took sole possession thereof; that in 1867, however, he relinquished it in favor of G. in pursuance of an award, wherein it was found the plaintiff had no right or title thereto; and that in 1870 it was purchased by the defendant, who, in 1871 and 1872, erected the obstructions complained of by the plaintiff. *Held*, that though, in the interval between 1860 and 1867, the plaintiff had not such an estate in the servient tenement as to constitute unity of title in him to the two

PREScription—continued.

tenements, and thereby extinguish all easements between them, yet the unity of possession in the plaintiff during that period excluded the operation of s. 27 of Act IX of 1871, as the enjoyment during that time was not "of right." *Semble*.—In order that the enjoyment should be "of right," there must be an adverse exercise of it as against the servient holder. Act IX of 1871 does not exclude other modes than therein provided of acquiring an easement by enjoyment. In this case, applying the law of prescription in force in Calcutta prior to 1871, which was the English law previous to the passing of 2 & 3 Will. IV, c. 71, a grant might be implied independently of user: and under the circumstances of the case, the plaintiff was entitled to such right to easements of light and air as can be inferred from enjoyment,—i.e., a right to restrain the defendant from committing any act whereby the access of light or air should be so diminished as with respect to air to prove a nuisance or injurious to health, and with respect to light to render the house unfit for comfortable habitation, **MODHOOSOODUN DEY v. BISSEONATH DEY**,

[xv 361]

PRESUMPTION.

See HINDU LAW, CUSTOM.
HINDU LAW, ENDOWMENT.
HINDU LAW, JOINT FAMILY.
HINDU LAW, PRESUMPTION OF DEATH.

PRESUMPTION OF JURISDICTION.

See JURISDICTION OF CRIMINAL COURTS.

PRESUMPTION OF LOST GRANT.

See PRESCRIPTION.

PREVIOUS CONVICTION.

See EVIDENCE, CRIMINAL CASES.

PRINCIPAL AND AGENT.

See CHARTER-PARTY.
COMPANY.
GOODS SOLD AND DELIVERED.
HUNDI.
TAZI MANDI CHITTIES.

2.—*Liability of banian—Custom*] There is a presumption in Calcutta that where a vendor of goods deals with a banian of a European firm, *grā* banian, he is only to look to the banian for the price. **FAIZULLAH v. RAM-KAMAL MITTER** - - - ii O. C. 7

3.—*General or special power of agent—Evidence of agency.*] Where the evidence goes to show that a particular person said to be the agent of the defendant was really his general agent, and did transact business of various kinds for his principal, it is unnecessary to prove any special power enabling him to enter into a particular contract of bargain and sale. *Per* MACPHERSON, J.—The extent and nature of the powers vested in an agent are not so much matter of law as matter of fact. If it be proved that a person acted ordinarily as an agent for the defendant in buying and selling articles of merchandise, the fact of his

PRINCIPAL AND AGENT—continued.

not being proved to have previously purchased a particular kind of article would not necessarily operate against the plaintiff's case. The Court, in deciding the question of agency, must look to the general evidence on the record. **RAM BAKS LAL v. KISHORI MOHAN SHAHA,**

[iii A. C. 273]

4. — *Thakbust map—Act of agent—Endorsement—Evidence.*] In a suit for possession of certain lands, for rectification of a thakbust map, and reversal of an Act X decision, the plaintiffs obtained a decree in the Court of first instance, the lower Appellate Court, and subsequently in the High Court on appeal. It appeared that the lower Courts had before them an incorrect copy of the thakbust map, the original forming part of the record of another suit. The High Court on appeal refused to send for this map, but subsequently, on review, it was sent for. There was an endorsement on the back, which did not appear on the copies originally before the Court, to the effect that the lands in dispute were pointed out by one T. C., acting as agent for the plaintiffs, to be measured as belonging to the defendant's talook. *Held*, the case must be remanded to the lower Appellate Court to determine (1) whether T. C. was the agent of the plaintiff; (2) whether, acting within the scope of his authority as such agent, he did sign the map as a correct map, and pointed out the lands as belonging to the defendant; (3) and if so, how far these acts of the agent were binding on the plaintiffs. **SUDAKHINA CHOWDHRAIN v. RAJ MOHAN BOSE** — — — [iii A. C. 377]

5. — *Admission of title by mookhtear.*] Where a mortgagee signed a mookhtearnama, in which he stated that he would abide by any arguments which might be urged, and any documents which might be filed by the mookhtear thereby appointed, and the mookhtear subsequently filed a written statement signed by himself alone in which he admitted the mortgagor's title,—*held*, the written statement could not be incorporated with the mookhtearnama so as to make it part of the document signed by the mortgagee. **LUCHMEE BUKSH ROY v. RUNJEET RAM PANDAY** xiii P. C. 177

PRINCIPAL AND SURETY—Execution of decree—Death of principal.] A decree was obtained against a surety only, the principal debtor being dead, and his property having been attached as of an intestate, and proclamation made. *Held*, that the property could not be taken in execution of the decree against the surety. **KALI CHARAN v. SRIRAM** ii A. C. 192

3. — *Suit on hundi—Accommodation—Time given to principal.*] The defendant, in the course of dealings with S. A. of Patna, used to draw hundis at Patna on himself at Calcutta, and sell them to S. A. at Patna; S. A. sometimes only paying part of the consideration for the hundi. On 13th September, 1867, the defendant drew a hundi for Rs. 2,500, payable forty-one days after date, in the usual way, and it was stipulated between him and S. A.

PRINCIPAL AND SURETY—continued.

that the value should be paid by S. A. in three days. On 15th September, the plaintiff in Calcutta discounted the hundi in the ordinary course of business, paying for it Rs. 2,468, or thereabouts. It then purported to be accepted by the defendant in favor of S. A. Before the hundi fell due, S. A. failed, and the plaintiff took the hundi to the defendant in Calcutta, and informing him of S. A.'s failure, asked him to pay the hundi. The defendant admitted he had drawn the hundi, denied he had accepted it, and refused to pay, saying (he alleged) that he had received no consideration for it. Before the failure of S. A., who had not paid the consideration as stipulated, the defendant pressed him for payment of the consideration for the hundi, and S. A. wrote and delivered to the defendant the following letter, dated September, 16th, 1867, from himself to his firm in Calcutta: "Further, I sent you a chitti (hundi) for Rs. 2,500, drawn by Bhugwan Dass (the defendant) upon Bhugwan Dass upon (us), Calcutta; value deposited by me on September 13th, 1867, payable forty-one days after date in Company's rupees. I have taken a hundi of this description, which you will pay on its due date. The money has not been paid, for which I give this puja in writing, which you will know." After S. A.'s failure, and after the defendant's refusal to pay on the due date, the plaintiff made the arrangement with S. A., which is embodied in the following letter from S. A. to the plaintiff, dated November 3rd, 1867: "Further, I discounted with you at Calcutta hundis for Rs. 5,000, which one Pitam Das coming to Calcutta were paid off in the following manner: a hundi for Rs. 2,500 drawn by Bhugwan Das on Bhugwan Das, value deposited by me on the 15th day of the light side of the moon in Bhadra, payable forty-one days after date in Company's rupees; and a hundi for Rs. 2,590 by Gapi Shaw, Debi Shaw, Radha Shaw, Ram Sahayi Roy, value deposited by me on 14th day of the light side of the moon in Bhadra, payable forty-one days after date in Company's rupees. I discounted hundis of this description, and out of them I paid Rs. 2,200 in cash through Syad Mahomed Hossein Khan Sahib. The balance, Rs. 2,800, is due, the condition for payment of which is as follows (here follows the manner in which payment was to be made): I made an agreement of this sort, and I will pay the whole of the amount, inclusive of interest at 8 annas, and will take the two hundis from Bhai Ram Kissen Futteh Chund, with whom they are kept. Should I not pay the money according to this condition, then you have the authority." For the defendant it was contended that the effect of the letter of 16th September was to make the defendant a surety only for S. A.; that the plaintiff had notice of this at the time of entering into the agreement giving time to S. A.; which therefore operated as a release to the defendant. In a suit by the plaintiff to recover the amount of the hundi from the defendant, the Court found that it was not proved that the hundi had been

PRINCIPAL AND SURETY—continued.

accepted by the defendant, but held that, whether the effect of the agreement contained in the letter of September 16th was to make the defendant a surety only or not, the defendant was liable. *Per* NORMAN, J.—Notice of the defendant's position in regard to the hundi was not communicated to the plaintiff. *Per* MACPHERSON, J.—The agreement contained in the letter of 16th September did not alter the position of the parties so as to make S. A. the principal debtor, and the defendant his surety. **HARJIBAN DAS v. BHAGWAN DAS** - - - - - vii 535

3. — *Discharge of surety—Giving time to principal.*] A. and his surety B. executed a bond to C. for the faithful discharge of A.'s duties as a gomasta. In September, 1866, upon accounts being rendered, A. was found indebted to C. in a certain sum of money. A. thereupon executed an *ikrar* to C., which was accepted by C., agreeing thereby to pay the amount due in February following. On default being made, C. sued A. and B. for the amount due. *Held*, that the acceptance of the *ikrar* without the knowledge or consent of B., giving time for payment, was a discharge to the surety. **PURI SUNDARI DEBI v. DROBOMAYI DEBI** - - - - - vii Ap. 10

4. — *Acceptance of interest in excess or advance—Giving time to principal—Discharge of surety.*] In an action against a surety for principal and interest payable on a promissory note, *held*, overruling the decision of the Court below (MACPHERSON, J.), that the creditor, by the mere acceptance, without the knowledge or consent of the surety, of interest in excess of what was due on the note, bound himself to give time to the principal debtor, and thereby discharged the surety. **KALI PRASANNA ROY v. AMBICA CHARAN BOSE,** [ix 261

5. — In a suit against D. and K. on a promissory note, where K. raised the defence that he was only a surety for D., and that the plaintiff having given time, D. was released from liability, *held*, that it was necessary to show that the fact that K. signed the note only as surety for D. was known to the plaintiff at the time when the note was made. *Held* also, that a binding contract to give time to the principal cannot be inferred from the mere receipt by the creditor of interest in advance on the note. **PUNCHANUN GHOSE v. DALY,** [xv 331

6. — The mere taking by the holder of a promissory note of interest in advance from the principal debtor, does not operate as an agreement not to sue during the time covered by the interest, and therefore does not constitute such a giving of time to the principal as would release the surety. **DWARKANATH MITTER v. DALY ; DWARKANATH MITTER v. BIRCH,** [xv 338 note

PRIORITY OF OFFICIAL ASSIGNEE.

See INSOLVENCY.

PRIORITY OF REGISTERED OVER UNREGISTERED DEED.

See FRAUD.

REGISTRATION.

PRISONER.

See WITNESSES.

2. — *Right of, on trial—Documents, copies of—Evidence.*] A prisoner applied for copies of certain documents filed in Court for the purpose of his defence. *Held*, the Magistrate had erred in refusing his application. *Per* LOCH, J.—A prisoner is entitled to have copies of all documents for which he asks, and which he thinks necessary for his defence, and it is for the officer trying the case, whether Magistrate or Judge, to determine at the hearing whether the documents filed by the prisoner are or are not admissible as evidence. **IN THE MATTER OF THE PETITION OF SHIB PRASAD PANDA** - - - - - vi Ap. 69

PRISONER, EXAMINATION OF.

See EVIDENCE, CRIMINAL CASES.

PRISONERS' TESTIMONY ACT (XV OF 1869).

See CIVIL PROCEDURE CODE, s. 78.

—, s. 16—*Signature of jailor—Judicial notice.*] The Court will take judicial notice of the signature of the jailor under s. 16, Act XV of 1869, Prisoners' Testimony Act. **TAMOR SING v. KALIDAS ROY** - - - - - iv O. C. 61

PRIVATE DEFENCE, RIGHT OF—Possession.] A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. **QUEEN v. TULSI SINGH** - - - - - ii A. Cr. 16

2. — *Penal Code, ss. 97, 99.*] The right of private defence as described in s. 97 of the Penal Code is subject to the restrictions mentioned in s. 99,—that is, it should be exercised only in the defence of one's own body or that of another person against an offence affecting the human body. Under s. 102 the right commences only on a reasonable apprehension of danger to the body caused by an attempt or threat to commit an offence, and by s. 99, cl. 4, the right is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence. **QUEEN v. GOBARDHAN BHUYAN** - - - - - iv Ap. 101

3. — *Penal Code, ss. 148, 304—Culpable Homicide.*] The prisoners who, in resisting a sudden attack made upon them by certain persons for the purpose of cutting their crop, and when they had no time to complain to the police, inflicted a wound on one of them with a bamboo, from the effects of which the man died, were convicted by the Sessions Judge, under ss. 148 and 304 of the Penal Code. The High Court acquitted the prisoners, holding that the force used, or the injuries inflicted, were not such as to exceed their rights of private defence of property. **QUEEN v. GURU CHARAN CHANG** - - - - - vi Ap. 9

4. — *House-breaking—Limits of right of defence.*] The right of private defence of property against house-breaking does not extend to causing the death of the house-

PRIVATE DEFENCE, RIGHT OF—continued.

breaker when he has made his escape from the premises empty-handed, and is at some distance from the place. No more harm should be done than is necessary to effect his capture. *QUEEN v. BOLAKI JOLAHAD* 1 S. N. viii

PRIVATE PROSECUTOR—Criminal Procedure Code (Act XXV of 1861), s. 434—Right to appear.] Private prosecutor not allowed to appear on a reference to the High Court under s. 434 of the Criminal Procedure Code. *QUEEN v. RAMJAI MOZUMDAR* - - vi Ap. 46

PRIVILEGE FROM ARREST.

See CONTEMPT OF COURT.

PARDANASHIN WOMEN.
WITNESSES.

PRIVILEGED COMMUNICATION—Act II of 1855, s. 24—Mookhtear and client.] The question whether a communication between the accused and a witness is privileged, is a question of law for the Judge to decide. Communications between mookhtears and their clients are not privileged within s. 24 of Act II of 1855. *QUEEN v. CHANDRAKANT CHUCKERBUTTY*, [1 A. Cr. 8

2. — *Prosecutor in criminal case and his attorney and clerk.] Semble.*—Communications between a prosecutor in a criminal case and his attorney, and between the attorney and his clerk, with respect to the case, are not privileged. *IN THE MATTER OF THE PETITION OF BELILIOS* - - - - - xii 249

PRIVY COUNCIL, EXECUTION OF DECREE OF.

See LIMITATION ACT XIV OF 1859, s. 19.

MESNE PROFITS.

PRIVY COUNCIL, PRACTICE OF, IN APPEAL—

Evidence wrongly admitted.] Where the Courts below had admitted evidence not properly admissible, the Judicial Committee examined the whole evidence, and being satisfied that there was, independent of that inadmissible evidence, sufficient to justify the decision of those Courts, dismissed the appeal. *LALA BANSIDHAR v. GOVERNMENT OF BENGAL* 12 P. C. 264

2. — *Adoption—Direct evidence as opposed to suspicion.]* The Sudder Ameen having held an adoption proved, the Principal Sudder Ameen on appeal reversed that decision on the facts. The case came before the High Court on special appeal, and the decision then given was appealed to England, and special leave was given by Her Majesty to appeal against the decision of the Principal Sudder Ameen. The decision of the High Court on the law was admitted to be good, but the Judicial Committee reversed the finding of the Principal Sudder Ameen on the facts. *KALI CHANDRA CHOWDHRY v. SHIB CHANDRA BHADURI* - - - - - vi P. C. 501

3. — *Wrongful admission of evidence.]* Where evidence, such as hearsay, is improperly admitted, the question for the Judicial Committee is whether, rejecting that evidence, enough remains to support the finding. Disapproval was expressed by their Lordships of the reception by the lower Court of evidence

PRIVY COUNCIL, PRACTICE OF, IN APPEAL—continued.

which ought not to have been admitted. *MOHUN SING v. GHURIBA* - - - vi P. C. 495

4. — *Hearsay evidence—Wrong conclusions from evidence.]* Where the High Court founded their judgment upon evidence which did not justify the conclusion, the Judicial Committee reviewed the whole evidence, in order to ascertain whether the decree could be supported. *AJODHYA PRASAD SING v. UMRAO SING*, [vi P. C. 509

5. — *Guardian and ward—Application by infant on coming of age to withdraw from the suit.—Dismissal for want of prosecution.]* An infant appellant, in an appeal pending in the Privy Council, having come of age, and having petitioned the High Court in India to be allowed to withdraw from the suit,—*held*, that it was competent to the respondent in England to have the appeal dismissed for want of prosecution, although the guardian had given security for the costs and paid the expenses of the appeal, and although the (former) infant was not served with notice of the motion, the Council being satisfied that he had in the High Court petitioned for leave to withdraw. *BISTUPHYA PATMADAYI v. BASUDEB DHALL BEWARTY PATNAIK* - - - vi P. C. 199

6. — *Special appeal.]* Where a case has been heard by the High Court on special appeal, and on appeal to the Privy Council it is desired to include in the appeal the decisions of the lower Courts on the facts, an application for special leave to do so should be made previous to the hearing. The Judicial Committee will not, as a rule, allow a petition of appeal from those decisions to be put in at the hearing, *nunc pro tunc*. *GOLAM ALI v. KALLYKISHEN THAKOOR*, [xii P. C. 107

7. — *Grounds of appeal.—Objection not taken before High Court.]* The Judicial Committee refused to entertain an objection taken in the grounds of appeal, which had not been taken on appeal to the High Court. *FORBES MEER MAHOMED HOSSEIN* - - - xii P. C. 210

8. — A plaintiff sued to set aside certain documents which he alleged to have been forged by the defendant. At the trial of the case in the Court of first instance the only issue directed to these documents was :—“Are the three written agreements said to have been given by the plaintiff to the defendant genuine and valid deeds?” It was not contended by the plaintiff in that Court that the agreements had been obtained from him while he was a minor by undue influence, nor was that objection taken in the grounds of appeal against the judgment of the Court. *Held*, that it was too late to take the objection for the first time in the Court of Appeal. *AMEERONISSA KHATOON v. ADADOONISSA KHATOON* - - - - - xv P. C. 67

9. — *Misstatement in petition—Costs.]* Where special leave to appeal to the Privy Council is granted upon a petition in which material misstatements are made, objection should be taken by the respondent by a preli-

PRIVY COUNCIL, PRACTICE OF, IN APPEAL—
continued.

minary motion to rescind the leave to appeal, or at any rate before the hearing of the appeal, when called on, has been entered on. Where it was not clear that the material misstatements in the petition had been made with an intention to deceive, and the objection to the appeal was only taken at a late stage of the hearing, the Judicial Committee declined to dismiss the appeal, but refused the appellant the costs of the appeal. **RAM SABUK BOSE v. KAMINEE KOOMAREE DOSSEE** - xiv P. C. 304

10. — *Rehearing—Laches of petitioner.* [There were four respondents in an appeal to the Privy Council. At the hearing, the appeal was allowed *ex parte* against all the respondents. One respondent afterwards petitioned for a rehearing, on the ground that neither he nor his agents had notice that the appeal had been entered or fixed for hearing until after it had been decided. On enquiry, it appeared that the petitioner had inaccurately described the suit to his agents as an appeal against himself only, without mentioning the names of the other respondents; and the agents, on being told at the Privy Council office that no appeal so entitled was pending, had taken no further steps. *Held*, that there had been omission and neglect on the petitioner's part and on the part of his agents such as to prevent the Judicial Committee from recommending a rehearing of the case. **SWARNAMAYI v. SHASHI MUKHI BARMANI**, [ii P. C. 60]

11. — *Respondents in same interest—Costs* [Where respondents were in the same interest but severed in their defences, only one set of costs was allowed, and that to the respondent who first entered appearance. **WOOMATARA DEBIA v. UNNOPOORNA DEBIA** - xi P. C. 158]

12. — *Appeal brought contrary to agreement not to appeal—Costs.* [A fixed sum *nomine expensarum* was given to each respondent in lieu of costs, where an appeal was preferred contrary to an agreement not to appeal, and the proceedings had been stayed. **AMIR ALI v. INDURAJIT KOER** - ix P. C. 460]

13. — *Leave to appeal granted without authority—Preliminary objection—Special leave to appeal.* [An objection that an appeal has come before the Judicial Committee without proper authority ought to be taken at the earliest moment, but may be entertained at any stage of the appeal, and is not unfrequently heard when the appeal is called on and before the arguments on the merits have commenced. An appeal being called on, and before the case was gone into on the merits, the objection was taken by the respondent and appeared to be well-founded. The appellant thereupon applied to the Judicial Committee to grant him special leave to appeal *nunc pro tunc*. *Held*, that it was competent to the Judicial Committee to grant such special leave, but leave was refused under the particular circumstances of the case. **GAJADHAR PERSAD v. THE WIDOWS OF EMAM ALI BEG** xv P. C. 231]

PRIVY COUNCIL, PRACTICE OF, IN APPEAL—
continued.

14. — *Concurrent decisions on fact.* [The Lords of the Privy Council do not, as a rule, disturb the concurrent decision of both the Courts below upon a question of fact, unless it very clearly appears there has been some miscarriage of justice, some mistrial, or that the conclusion is very plainly erroneous. **GOSAIN TOTA RAM v. RAJA RUKINIBALLAB** iii P. C. 34]

15. — Where the Court of appeal in India concurs in the finding of the Court of first instance on a question of fact, the Privy Council will not disturb that finding, unless satisfied, beyond all reasonable question, that there was some miscarriage in respect of the principle on which the decision rested, of a presumption to which too much weight was given, or of something as to which the Judicial Committee could see there was a principle involved which ought to be set right for the guidance of the Court in other cases. **GABINDSUNDUARI DEBI v. JAGADAMBA DEBI** - vi P. C. 168]

16. — Where both the lower Courts had agreed as to the facts, the Privy Council refused to examine the evidence, the controversy being merely as to the weight to be attributed to it. **LALJI SAHU v. COLLECTOR OF TIROOHT** - vi P. C. 648]

17. — Where the High Court affirmed the judgment of the Court below on the facts, without giving reasons for such affirmation, the Judicial Committee reviewed the facts and reversed the decree. **GUTHRIE v. ABUL MAZAFAR** - vii P. C. 630]

18. — Where there are concurrent decisions on a question of fact, the Judicial Committee will not (especially on a question of fact as to boundaries) reverse the decision, unless there was no evidence, or there has been in the conduct of the trial, or in the mode in which evidence was adduced, or in the course of deciding the case, a clear departure from the ordinary principles which regulate judicial proceedings. **GANESWAR SING v. DURGA DUTT** - vii P. C. 651]

19. — Where the decision of the first Court upon a question of fact has been affirmed on appeal, their Lordships will not reverse such finding on a mere balance of testimony; there must be so strong a preponderance of testimony that they can confidently pronounce it to be wrong. **SARAT SUNDARI DEBI v. KUMAR PARESNARAIN ROY** - viii P. C. 113]

20. — The Judicial Committee, reversing the finding of the Courts below, refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years, the plaintiff having failed to prove that the suit was fictitious, and the compromise fraudulent and collusive. **LEKRAJ ROY v. MAHTABCHUND** - x P. C. 35]

21. — The Courts below, without ascertaining the amount of the widow's dower, decreed possession of the estates to the heirs. Such

PRIVY COUNCIL, PRACTICE OF, IN APPEAL—
continued.

decree was reversed on appeal, and the amount of dower was ascertained. **BACHUN v. HAMID HOSSEIN** - - - - - x P. C. 45

22. — A decree of a High Court confirming the decree of a District Judge for dissolution of marriage reversed, so far as it affected the co-respondent and condemned him in costs. The circumstances of the case took it out of the general rule not to reverse the concurrent findings of two Courts on a question of fact. **HAY v. GORDON** - - - - - x P. C. 301

PROBATE.

See WILL.

2. — *Will of Hindu—Evidence.*] Grant of probate of the will of a Hindu confers no title upon the executor, but he derives his title from the will itself. Probate is evidence of his title, only so far as a decree of the Court granting it would be, namely, between the parties and those privy to the suit in which the decree is made. **SHARO BIBI v. BALDEO DAS** - - - - - i O. C. 24

3. — *Executor, position of.*] Government Promissory Notes belonging to the estate of a deceased Hindu were endorsed over, without consideration, by A. (who had taken out probate of a forged will, and was acting under the same as executor) to B., who received the same *bonâ fide*, but without due inquiry; and on obtaining a renewal of the same, endorsed the renewed paper back to A. for the purpose of enabling him to raise money thereon, believing that A. had a right to do so. *Held*, that A. was liable to account to the representatives of the deceased for the value of the said Promissory Notes as assets of the deceased come into his hands. The property in the moveable estate of a Hindu does not pass to his executor as such. **JAYKALI DEBI v. SHIBNATH CHATTERJEE** - - - - - ii O. C. 1

4. — *Hindu will—Executor by implication—Succession Act, s. 182—Hindu Wills Act (XXI of 1870).*] Probate granted of the will of a Hindu to his widow and heiress, who was universal legatee under the will, as executor by necessary implication, there being no executor mentioned in the will. **IN THE GOODS OF RADHIKA MOHAN SETT** - - - - - vii 563

5. — *Will—Evidence—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865), ss. 180, 242.*] The effect of the Hindu Wills Act which makes (among others) ss. 180 and 242 of the Succession Act applicable to Hindus, is to make the probate of the will evidence of the will against all persons interested under the will. **BRAJANATH DEY SIKKAR v. ANAND-AMAYI DAS** - - - - - viii 208

PROCEEDING IN CIVIL CASE.

See RULES OF HIGH COURT.

PROCEEDING TO ENFORCE DECREE.

See CIVIL PROCEDURE CODE, s. 216.

LIMITATION ACT XIV OF 1859,
s. 20.

PROCEEDS OF PROPERTY SOLD IN EXECUTION OF DECREE.

See APPEAL.

ATTACHMENT.

PROCEDURE.

See EXECUTION OF DECREE.

ISSUES.

OFFENCE COMMITTED ON THE HIGH SEAS.

PAUPER SUIT.

RECOGNIZANCE TO KEEP PEACE.

REGISTRATION ACT XX OF 1866,
s. 22.

SALE FOR ARREARS OF REVENUE.

PROCLAMATION FOR ABSCONDING PARTY.

See ABSCONDING OFFENDER.

PROHIBITORY ORDER.

See NUISANCE

SALE IN EXECUTION OF DECREE.

PROHIBITORY ORDER, SERVICE OF.

See CIVIL PROCEDURE CODE, s. 239.

PROMISSORY NOTE.

See BILLS OF EXCHANGE ACT.

CAUSE OF ACTION.

GOVERNMENT PROMISSORY NOTE.

HINDU LAW CONTRACT.

INTEREST.

LIMITATION ACT XIV OF 1859, s.
1, CL. 10.

STAMP.

2. — *Endorsement to a third person for purpose of allowing him to sue—Assignment of negotiable instrument.*] There is nothing illegal in the true holder of a promissory note endorsing it to another person, with the express object of allowing him to sue upon it. **RAMLAL MOOKERJEE v. HARAN CHANDRA DHAR** - - - - - iii O. C. 130

3. — *Contract or obligation—Registration Act (XVI of 1864), s. 16—Act XIV of 1859, s. 1, cl. 10.*] A promissory note is a "contract or obligation" under s. 16, Act XVI of 1864, and as such might have been registered under that Act: consequently the period of limitation prescribed by s. 1, cl. 10, of Act XIV of 1859, *viz.*, three years, applies to it. **PRARI CHAND MITTER v. FRAZER** - - - - - vi Ap. 40

4. — *Suit on, under Act V of 1866—Consideration—Lottery Act (V of 1844).*] The defendant agreed with the plaintiff to take the plaintiff's mare "Bridesmaid" on "racing terms,"—all winnings to be divided equally between them, and the plaintiff to have the option of claiming a one-fourth share of any lottery in which she might be bought by or on account of the defendant; the plaintiff to keep and train "Bridesmaid" for Rs. 60 a month. Subsequently, the plaintiff agreed to keep and train, for a like sum for each horse, five horses belonging to the defendant. The defendant having been posted as a defaulter, the plaintiff, at the defendant's request, advanced certain sums to the Secretary of the Calcutta Races to enable the defendant's horses to run. As security for the repayment of such advances, and of a sum of Rs. 4,456-6, which had become due to the plaintiff, and

PROMISSORY NOTE—continued.

which included an item of Rs. 1,149 for "balance of bets and lotteries," and a smaller sum in respect of certain tickets in the "Secundra Raffle," the defendant gave to the plaintiff a letter of hypothecation of his five horses, whereby it was agreed that in case of the defendant's default, the plaintiff should be at liberty to sell the horses. The defendant made default, and the plaintiff advertised the horses for sale. On the same day the defendant wrote and gave to the plaintiff a letter, stating that, in consideration of the plaintiff's withdrawing the advertisement, and withholding the sale for a certain period, he would give the plaintiff a promissory note for the balance of his claim. A note for Rs. 7,000 was accordingly given by the defendant to the plaintiff. In the account delivered by the plaintiff to the defendant, he had by mistake over-credited the defendant with Rs. 744 in an item headed "cash received from the Secretary of the Calcutta Races balance of racing account," and under which was included the following item "I. O. U. deducted from lottery account, Rs. 480." On receiving information of the error, the defendant gave the plaintiff another promissory note for Rs. 744. In an action on the notes brought under Act V of 1866, the plaintiff obtained a decree, which was set aside on the defendant's application, and leave was given to him to appear and defend. Written statements were then filed on the plaintiff's application. *Held* by MACPHERSON, J., that the two promissory notes were given as a security for the whole of the plaintiff's claim; that the items for "balance of bets and lotteries" and for the "Secundra Raffle" being rendered illegal by the Lottery Act (V of 1844), part of the consideration for the notes was illegal, and no action was maintainable upon them. His Lordship, therefore, dismissed the plaintiff's suit. On appeal, *held* by COUCH, C. J., that the promissory note for Rs. 7,000 was not vitiated by the Rs. 1,149 being part of the consideration for it: although that portion of the latter sum which was won by lotteries was obtained by an illegal transaction, it was not illegal for the defendant to receive the money, and having done so, to pay the plaintiff his share or to promise to do so. But the money paid in respect of the "Secundra Raffle," being money paid in execution of an illegal purpose, was an illegal consideration which disentitled the plaintiff to recover on the note. *Held* further, that the note for Rs. 744 was given upon good consideration. All the facts of the case being stated in the plaintiff's written statement, the Court might allow the plaint to be amended, and frame an issue as to what amount was due to the plaintiff in respect of the consideration for the note for Rs. 7,000. *Held* by MARKBY, J., that both notes were good, inasmuch as the promise contained in them did not spring from, nor was it the creature of, the original illegal agreement, but was a separate agreement. JOSEPH v. SOLANO, [1x 441

PROMISSORY NOTE PAYABLE ON DEMAND.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 9.

PROMISSORY NOTE REGISTERED UNDER s. 52, ACT XX OF 1866.

See MERGER.

PROMISSORY NOTE, SUIT ON.

See HUSBAND AND WIFE.

PROMISSORY NOTES, ISSUE OF.

See COMPANY.

"PROPERTY."

See ATTACHMENT.

PROPERTY ON WHICH THERE IS A MORTGAGE OR INCUMBRANCE.

See COURT FEES ACT.

PROPERTY SUBJECT TO A TRUST.

See COURT FEES ACT.

PROSTITUTES—Act XIV of 1868, ss. 11 and 21—Registry of common prostitutes—Jurisdiction of Magistrates to entertain pleas of irregularity in the registry—Possession of registry ticket.]

Under Act XIV of 1868, the police are not empowered to put a woman on the register of "common prostitutes" against her will. The penalty prescribed by s. 11, Act XIV of 1868, for disobedience of any of its rules, is for a "woman" who voluntarily registers herself as a "common prostitute." A Magistrate has authority to hear any objection urged by a woman charged with disobedience of the rules under Act XIV of 1868, against the legality of her registry, or that she is not a common prostitute. The possession of a registry ticket is not sufficient evidence of being a common prostitute. IN THE CASE OF LAKHIMANI RAB, [iii A. Cr. 70

PROSTITUTES, SUIT FOR RENT OF LODGINGS LET TO.

See LANDLORD AND TENANT.

PROSTITUTION, OBTAINING POSSESSION OF MINOR FOR PURPOSES OF.

See PENAL CODE, ss. 372, 373.

PROTECTOR OF LABORERS.

See BENG. ACT VI OF 1865.

PROVOCATION.

See CULPABLE HOMICIDE.

PUBLIC DOCUMENTS.

See EVIDENCE ACT, ss. 74 AND 77.

PUBLIC ROAD, SUITS RESPECTING.

See JURISDICTION OF CIVIL COURT.

PUBLIC SERVANT—Penal Code, s. 21, cl. 9, and s. 161—Illegal gratification—Peon remunerated by fees.] A peon of the Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special sub-registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. *Held*, that the peon was a public servant under the definition in the 9th

PUBLIC SERVANT—continued.

clause of s. 21 of the Penal Code, and the trial of the charge against him must be proceeded with. *QUEEN v. RAM KRISHNA DAS* vii 446

PUNDITS, OPINIONS OF.—Observations of the Privy Council as to the weight to be attached to the opinions of pundits. *COLLECTOR OF MADURA v. MUTU RAMALINGA SATHUPATHY*, [i P. C. 1

PUNISHMENT, ENHANCEMENT OF.

See CRIMINAL PROCEDURE CODE (ACT X OF 1872), s. 280.
REVISION.

PUNISHMENT, FORM OF.

See OFFENCE COMMITTED ON HIGH SEAS.

PURCHASE BY HINDU WIDOW.

See VENDOR AND PURCHASER.

PURCHASE BY MEMBER OF JOINT HINDU FAMILY IN HIS OWN NAME WITH JOINT FUNDS.

See CIVIL PROCEDURE CODE, s. 260.
HINDU LAW, JOINT FAMILY.

PURCHASE BY MORTGAGEE.

See MORTGAGE.
PARTIES TO CONVEYANCE.

PURCHASE OF DECREE BY ONE OF SEVERAL JOINT DEBTORS.

See CONTRIBUTION, SUIT FOR.

PURCHASE-MONEY, REFUND OF.

See ACT XL OF 1858.

DECREE.
HINDU LAW, ALIENATION.
MINOR.
VENDOR AND PURCHASER.

PURCHASE-MONEY, SOURCE OF.

See BENAMI PURCHASE.
HINDU LAW, JOINT FAMILY.

PURCHASE-MONEY, SUIT TO RECOVER.

See CIVIL PROCEDURE CODE, s. 258.
SALE IN EXECUTION OF DECREE.
VENDOR AND PURCHASER.

PURCHASER, RIGHT OF.

See HINDU LAW, WIDOW.
SALE FOR ARREARS OF RENT.
SALE IN EXECUTION OF DECREE.

PURCHASER, SUIT FOR SHARE OF ESTATE BY.

See DECREE.

PURCHASER AT REVENUE SALE.

See ENHANCEMENT OF RENT.
GHATWALI TENURE.
SALE FOR ARREARS OF REVENUE.
SANAD.

PURCHASER AT SALE IN EXECUTION OF DECREE.

See ATTACHMENT.
LIS PENDENS.
MINOR.
PARTIES.
SMALL CAUSE COURT, MOFUSSEIL.
VENDOR AND PURCHASER.

2 — *Rights of—Limitation.*] One of four children set up a deed of gift and a will, in

PURCHASER AT SALE IN EXECUTION OF DECREE—continued.

virtue of which he was, in 1842, placed, by a summary proceeding of the Courts, in possession of the whole estate left by his deceased father. The rights and interests of two other children were subsequently sold in execution of a decree for debt, and purchased by the present plaintiffs. A fourth child instituted a suit against the first-mentioned one, to set aside the deed of gift and will, the result of which was that, in 1855, the will which affected two-thirds of the estate was set aside as having been made without due consent of heirs, the consent alleged in the will being held to be no consent. The plaintiffs now sued to get possession of the shares of the two children whose rights and interests they had bought. *Held*, reversing the decision of the High Court, that the plaintiffs as purchaser at an execution-sale, were in no better position than claimants under any other conveyance or assignment, and their cause of action arising in 1842 they were barred by limitation. *ENAYET HOSSAIN v. GRIDHARI LALL* — ii P. C. 75

PURCHASER, BONA-FIDE.

See LIMITATION ACT XIV OF 1859
s. 5.

PURCHASER, CHARGE ON SHARE OF ESTATE IN HANDS OF.

See CO-SHARERS.

PURCHASER FROM GUARDIAN.

See ACT XL OF 1858.
MAHOMEDAN LAW, GUARDIAN.
MINOR.

PURCHASER FROM HEIR OF MAHOMEDAN.

See MAHOMEDAN, LAW DEBTS.

PURCHASER FROM MEMBERS OF HINDU FAMILY.

See HINDU LAW, JOINT FAMILY.
VENDOR AND PURCHASER.

PURCHASER FROM MINOR.

See LIMITATION ACT IX OF 1871, s. 7.

PURCHASER HAVING PERSONAL KNOWLEDGE OF PROPERTY PURCHASED.

See SPECIFIC PERFORMANCE.

PURCHASER OF RIGHTS OF HOLDERS OF FRACTIONAL SHARE OF ESTATE.

See BENG. ACT VIII OF 1865.

PURCHASER OF SHARE OF LAKHIRAJ ESTATE.

See PARTITION.

PURCHASER UNDER EXECUTION AGAINST ASSETS OF TESTATOR.

See PARTIES.

QUARRIES, SUIT FOR RENT OF STONE QUARRIES.

See JURISDICTION OF REVENUE COURT.

QUESTION OF FACT.

See SPECIAL APPEAL.

QUESTION PUT BY JUDGE TO JURY AFTER SPECIAL VERDICT.

See VERDICT OF JURY.

QUESTION REFERRED TO FULL BENCH.*See* REFERENCE TO FULL BENCH.

RAILWAY COMPANY—Liability—Carriers of goods—Act XVIII of 1854, s. 11—Negligence.] The East Indian Railway Company cannot, under s. 11 of Act XVIII of 1854, limit their responsibility as carriers in respect of ordinary goods so as not to be liable for loss or injury caused by gross negligence or misconduct, though possibly they may, with the consent of Government, limit their liability by contract or notice for loss arising otherwise than by gross neglect. **EAST INDIAN RAILWAY COMPANY v. JORDAN** - - iv O. C. 97

2. — *Liability for nuisance caused by works—Statutory powers—Reg. I of 1824—Act XLIII of 1850—Land taken for public purposes—Suit for injunction to restrain nuisance.]* The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby. The defendants were a Railway Company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorized and directed to make and maintain such railway stations, offices, machinery, and other works (connected with making, maintaining, and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867 under the sanction of the Bengal Government on land purchased by the Government in 1854 for the purposes of the railway under Reg. I of 1824 and Act XLIII of 1850, and which had been made over to the defendants. *Held*, a nuisance having been proved to exist, that is to say, such annoyance as materially interfered with the ordinary comfort of human existence in the house, and caused sensible injury to the property of the plaintiffs, the defendants could not plead laches or acquiescence on the plaintiffs' part, as, upon the plaintiffs complaining in May, 1870, the defendants had admitted that there was a nuisance, and had up to June, 1871, made various efforts to abate it. Nor could the defendants escape liability on the ground that the nuisance had been caused by them in the reasonable exercise of powers conferred upon them by the Legislature. An injunction was granted restraining the defendants, and liberty to apply was reserved in the decree. On a motion by the defendants, supported by an affidavit showing the alterations which they proposed to make with the view of abating the nuisance, and alleging that a period of three months was required to carry out these alterations, and that a refusal to grant this time would necessitate the closing of the Company's workshops, and would occasion great inconvenience, the Court granted the time asked for, on the conditions that the defendants paid the costs of the application, and did all they possibly could in the

RAILWAY COMPANY—continued.

meanwhile to prevent annoyance to the plaintiffs. **RAJ MOHUN BOSE v. EAST INDIAN RAILWAY COMPANY** - - - x 241

3. — *Fire caused by spark from engine—Action for damages—Negligence—Statutory powers.]* The East Indian Railway Company was incorporated under 12 and 13 Vict., c. xciii, "for the purpose of making and constructing, working and maintaining" the East Indian Railway, including all necessary, accessory, or convenient extensions, branches, &c., as might be agreed upon between the Railway Company and the East India Company; and by agreement between the Railway Company and the East India Company, dated 17th August, 1849, the Railway Company was "authorized and directed to make and maintain such stations, offices, machinery, and other works and conveniences connected with the making, maintaining, and working the railway," and "to provide a good and sufficient working stock of engines, carriages, and other plant and machinery for working the said railway." The plaintiff was the owner of a piece of land adjoining the railway line at Kharmatta, a station on the Chord Line of the Company's railway, on which land was erected a bungalow, with stables and out-houses adjoining. In an action brought by the plaintiff against the Railway Company to recover compensation for damages occasioned by a fire caused by a spark from one of the engines of the Company, the plaintiff alleged want of due care on the part of the defendants in the management of the line by allowing dry grass of too great a length to remain on the railway banks, and in driving their engines along the line without due precautions being taken to prevent the expulsion of sparks. *Held*, that the defendant Company was authorized to run locomotive engines on the lines of railway constructed by the Company under the statutory powers given to it, and, therefore, the Company was not liable for damage caused in working the line under such statutory powers, without proof of negligence. *Held* also on the evidence that neither in the construction of their engines, nor in the condition of the railway banks, was any negligence shown on the part of the Company. **HALFORD v. EAST INDIAN RAILWAY COMPANY**, [xiv 1]

See also **MADRAS RAILWAY COMPANY v. ZEMINDAR OF CARVETINAGARAM** xiv P. C. 209

RAILWAY RECEIPT.*See* CONTRACT.**RAJ, SUCCESSION TO.***See* HINDU LAW, CUSTOM.**RAPE, ATTEMPT AT.***See* SENTENCE.**RATIFICATION.***See* GUARDIAN.**MASTER AND SERVANT.****RECEIPTS FOR RENT.***See* EVIDENCE, CIVIL CASES.

RECEIVER—Position and functions of—Parties—Suit for specific performance.] The Receiver in a suit is nothing more than the hand of the Court for the purpose of holding the property of the litigants whenever it is necessary that it should be kept in the grasp of the Court in order to preserve the subject-matter of the suit *pendente lite*; and the possession of the Receiver is simply the possession of the Court. He has no personal rights in the property, nor can he take any steps with regard to it without the sanction of the Court. If it is necessary for him to take action of any sort, he should be put in motion by the Court on the application of the parties to the suit; and whatever he rightly does with regard to the property, he does simply as the agent of the owners of the property. Where the Receiver in a suit had, by order of Court, sold certain property in the suit, and had executed the contract of sale in his own name, a plaint praying for specific performance against the purchaser for refusing to complete the contract was admitted with the Receiver as co-plaintiff, he having obtained leave to sue. **WILKINSON v. GAN-GADHAR SIKAR** - - - - - vi 486

2. — Parties to conveyance.] Where certain property, the subject-matter of a suit, in which the Court Receiver had been appointed Receiver, was sold in pursuance of an order of Court made by consent of parties,—*held*, that an application by the Court Receiver for an order that the purchaser do complete the purchase according to the conditions of sale must be refused as not being made in proper form. A sale of property under an order of Court by a person appointed Receiver in a suit is not a sale by the Court. The fact that such person is the Court Receiver does not place him in a different position. When the Receiver sells under such an order, it is necessary that he, being in possession of the property, should be a party to the conveyance. **CHANDRA NATH BISWAS v. BISWANATH BISWAS** vi 492 note

3. — Appointment of, out of jurisdiction of High Court—Power of High Court.] *Quære*.—Whether the High Court at Calcutta can appoint a receiver of property situate at Bombay? **HADJEE ISMAIL HADJEE HUBEEB v. HADJEE MAHOMED HADJEE JOOSUB and ROHIMA BYE v. HADJEE MAHOMED HADJEE JOOSUB** xiii 91

RECOGNIZANCE TO KEEP THE PEACE.

See ONUS PROBANDI.

POSSESSION, ORDER OF CRIMINAL COURT AS TO.

2. — Act XXV of 1861, s. 282—Act X of 1872, s. 491—Power of Magistrate—Breach of the peace—Wrongful act.] Under s. 282 of Act XXV of 1861, a Magistrate can prevent a person from doing a wrongful act, but not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his rights of property, because another person would be likely to commit a breach of the peace if he did so. **IN THE MATTER OF THE PETITION OF KASHI-CHUNDER DOSS** - - - - - x 441

RECOGNIZANCE TO KEEP THE PEACE—contd.

3. — Criminal Procedure Code (Act XXV of 1861), s. 282—Procedure.] Before making an order absolute directing a person to enter into a bond to keep the peace, the Magistrate must take the evidence in which he bases the order in the presence of the accused or his agent. (**GLOVER, J., dissenting.**) **MAGHAN MISRA v. CHAMMAN TELL** - - - ii A. Cr. 7
QUEEN v. NARSING NARAYAN ii A. Cr. 7 note

4. — Dispute likely to cause breach of peace—Evidence—Report of police officer.] The existence of a dispute likely to cause a breach of the peace must be first proved by legal evidence before the Magistrate can proceed to call upon the parties to enter into recognizances to keep the peace. The report of a police officer is not such legal evidence. **ABHAYA CHOWDEY v. BRAE** - - - - - iv Ap. 148

5. — Report of police officer—Procedure.] *Held* (**GLOVER, J., dissentiente**), the report of a police officer, though it justifies the issuing of a summons, is not sufficient ground on which to bind a man over in a recognizance to keep the peace. The Magistrate must adjudge on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace, after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses. **BEHARI PATAK v. MAHOMED HYAT KHAN; DUNNE v. HEM CHANDRA JHOWDEY; GOVERNMENT v. BEHARI LALL BRAJABASHI** - - - - - iv F. B. 46

6. — Criminal Procedure Code (Act XXV of 1861), s. 298—Illegal order.] A was bound over to keep the peace for a year. Before the expiry of the period he was involved in fresh disputes with other persons. The Deputy Magistrate, instead of referring the case to the Court of Session under s. 298 of the Code of Criminal Procedure, directed A. to enter into another recognizance for a further period of one year. *Held*, the order was illegal. **QUEEN v. KALINATH BISWAS** vi Ap. 116

7. — Criminal Procedure Code (Act XXV of 1861), s. 283.] A charge of criminal trespass and mischief was dismissed, thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognizances to keep the peace. *Held*, it was not necessary also to issue a summons to them under s. 283 of the Criminal Procedure Code. **QUEEN v. CHOWDHRY**, [ii Ap. 28]

8. — Criminal Procedure Code (Act XXV of 1861), s. 290—Execution of second recognizance.] Under s. 290 of the Criminal Procedure Code, an order to execute a second recognizance during the time the first recognizance is in force is illegal. **QUEEN v. KUMODINIKANT BANERJEE CHOWDHRY** - - - ix Ap. 30

9. — Power of Magistrate to alter amount and form from what is stated in summons.] A party was called upon summons to show

RECOGNIZANCE TO KEEP THE PEACE—contd.

cause why he should not be required to enter into his own recognizance to keep the peace for six months, the amount specified being Rs. 200. On his appearing before the Magistrate he was required to enter into his own recognizance to the amount of Rs. 4,000, and to find two sureties for Rs. 1,000 each, for a period of one year. *Held*, the order was an illegal one. **QUEEN v. ISREE PERSHAD SINGH** - ix Ap. 44.

10. — *Forfeiture of recognizance.* Before a Magistrate can declare that recognizances to keep the peace have been forfeited, he must record legal evidence in the presence of the accused, proving that he was about to do something which would cause a breach of the peace. **IN RE KALIKANT ROY CHOWDREY** iii Ap. 165

11. — *Forfeiture of recognizance.* On the application of A., a recognizance was taken from B. that he would keep the peace for six months under a penalty of Rs. 500. Before the expiry of the period, B. assaulted C. *Held*, that there was a forfeiture of the recognizance. **JAHU BAX v. GOVERNMENT** - vi Ap. 66

12. — *Criminal Procedure Code (Act XXV of 1861), s. 293—Jurisdiction.* A. executes in district T. a recognizance to keep the peace towards B. A. was afterwards convicted in district S. of having assaulted B. in that district. *Held*, A. had forfeited his recognizance, and the Magistrate in district T. could proceed against him under s. 293 of the Criminal Procedure Code. **QUEEN v. SHAM SUNDER CHOWDREY** - ii A. Cr. 11

RECOGNIZANCES, FORFEITURE OF.

*See CONTEMPT OF COURT.
SURETY.*

RECORD OFFICE, REPORT FROM.

See EVIDENCE, CRIMINAL CASES.

RECORD OF PROCEEDINGS IN SMALL CAUSE COURT.

See EVIDENCE, CIVIL CASES.

RECORDER OF MOULMEIN.

See SUPERINTENDENCE OF HIGH COURT.

RECORDERS' ACT (XXI OF 1863)—District of Amherst—Jurisdiction. Under Act XXI of 1863, the Recorder of Moulmein has no power to order execution to issue on a judgment of the late Court of the First Class Assistant Commissioner of the District of Amherst. **IN THE MATTER OF RYAW PETEE** - vi Ap. 15

—, s. 17—*Withdrawal of licence to practise as a pleader.* The Recorder of Moulmein, under s. 17 of Act XXI of 1863, has no power to withdraw a licence granted by him to plead in the Court of Moulmein, "except for any sufficient reason." **IN THE MATTER OF THOMSON** - vi 180

—, ss. 23, 25—*Reference to High Court—Execution of decree.* The Recorders cannot, under Act XXI of 1863, refer for the opinion of the High Court questions arising in execution of a decree. The question must be one in the trial of a suit. **DACOSTA v. CURRIE**, [iv A. C. 50

RECORDERS' ACT (XXI OF 1863)—continued.

—, s. 27—*Appeal to High Court—Valuation of suit.* Where the plaintiff sued to establish his right to a quantity of timber, the value of which he stated in his plaint to be Rs. 1,590, but on appeal to the High Court valued his appeal at Rs. 3,100, and made no claim for damages,—*held*, that no appeal lay to the High Court under s. 27, Act XXI of 1863. **MUTU v. VEERAPAH CHETTY** - viii Ap. 91

—, ss. 27 and 39—*Appeal—Valuation of suit.* The Recorder of Moulmein, in trying an administration suit, valued at Rs. 13,000, found as to Rs. 6,000 in value of the property claimed that it did not exist. The value of the amount decreed by him amounted to Rs. 7,000. *Held* that, under Act XXI of 1863, ss. 27 and 39, the appeal lay in the first instance to the High Court, and not to the Privy Council. **HAWABI v. IBRAHIM SALI BHAY DAPTI** - v 306

RECORDS, BURNING OF, IN MUTINY.

See POSSESSION.

REDEMPTION, RIGHT OF.

*See EQUITY OF REDEMPTION.
MORTGAGE.*

REFERENCE FROM SUDDER COURT AT AGRA—Establishment of High Court—Letters Patent, N.W.P., 1866, s. 27. The Sudder Court, being equally divided, referred a case for the opinion of the High Court of Calcutta. The High Court at Agra having been established in the meanwhile,—*held*, that the Chief Justice of that Court had power to hear and determine the case. **UDEY KUNWAR v. LADU** vi P. C. 283

REFERENCE TO FULL BENCH—Power of one Judge to refer. When the senior Judge of a Division Bench of the High Court composed of two Judges passes an order which he intends as a final judgment in a case, the junior Judge cannot of his own authority refer the case to a Full Bench. **IN THE MATTER OF THE PETITION OF CHUNDER KANT BHUTTACHARJEE** - Sup. Vol. Ap. 43

2. — *Refusal to answer question when found not to arise in the case.* The majority of the Judges of a Full Bench refused to answer the question referred, on the ground that it did not arise in the case. **INDRA CHANDRA DUGAR v. BRINDABUN BIHARA**, [viii F. B. 251

3. — Question referred not answered on the ground that it did not arise in the case. **GIRISH CHANDRA LAHURY v. FAKIR CHAND**, [Sup. Vol. 503

GOPAL CHUNDER ROY v. GOOROO DOSS ROY, [Sup. Vol. 764 note
See also RAM KANTH CHOWDREY v. BHUBAN MOHAN BISWAS, per PEACOCK, C. J., [Sup. Vol. 26

4. — **KEMP and MACPHERSON, JJ.**, were of opinion that the first question referred did not arise in the case, and therefore should not have been answered. **PROSONNO COOMAR PAL CHOWDREY v. KOYLASH CHUNDER PAL CHOWDREY** - Sup. Vol. 759

REFERENCE TO HIGH COURT.

See RECORDERS' ACT.
SMALL CAUSE COURT.

REFERENCE TO HIGH COURT UNDER s. 484, ACT XIV OF 1861.

See COUNSEL.
PLEADER.
RIGHT TO BEGIN.

REFUND OF STAMP DUTY.

See STAMP.

REFUSAL TO REGISTER.

See REGISTRATION ACT XX OF 1866,
s. 84.

REGISTRATION ACT VIII OF 1871.

REGISTRAR, OFFENCE COMMITTED IN PROCEEDING BEFORE.

See CRIMINAL PROCEDURE CODE (X
OF 1872), ss. 435 and 436.

REGISTRATION ACT XIX OF 1843—Priority of registered over unregistered deed.] A registered deed of sale has not priority under Act XIX of 1843 over an unregistered deed of mortgage of an earlier date. **MAHESWAR BUKSH SING v. BHIKHA CHOWDHY,**

[Sup. Vol. 403

2. — *Priority—Mortgage deed.*] The purchaser under a decree for sale in satisfaction of a registered mortgage, is entitled in priority to the purchaser under another decree for sale in satisfaction of another unregistered mortgage, although the latter mortgage be of an earlier date. **PRAHLAD MISSEER v. UDDI NARAIN SINGH—** — — 1 A. C. 197

REGISTRATION ACT XVI OF 1864, s. 13—Admissibility in evidence—Intention of parties.] A. sued B. for recovery of possession of land which he alleged had been sold to him by B. under a bill of sale. The bill of sale had been duly registered, and was not disputed by B., but B. produced an unregistered ikramamah, executed by A., to prove that the sale was not absolute, but only by way of mortgage. B. alleged that the terms of the bill of sale were qualified and explained by the ikramamah. *Held*, that the ikramamah was inadmissible in evidence, as it had not been registered under s. 13 of Act XVI of 1864, but that the Court might look at other and independent evidence—*viz.*, the acts and conduct of the parties—to throw a light upon their intention. **PARABDI SAHANI v. MAHOMED HOSSEIN** — — — 1 A. C. 37

2. — *Mortgage deed—Evidence.]* A. executed an instrument in favour of B., thereby covenanting to repay B. the amount of a loan, together with interest, and mortgaging certain immoveable property as security for repayment of the same. B. sued A. for the debt. *Held*, that the instrument did not directly create, declare, transfer, or extinguish any right or title in immoveable property; the land was mentioned as a collateral security, and therefore the instrument was not inadmissible in evidence under s. 13 of Act XVI of 1864. **GOPAL PRASAD v. NANDARANI** — — — 1 A. C. 192

3. — *Admissibility in evidence—Deed of compromise.]* R. S. R., a Hindu, died in

REGISTRATION ACT XVI OF 1864, s. 13—contd.

1811, leaving a will, by which he gave his property to his four sons subject to certain charges, and among other things directed that the profits of a portion of it should be dedicated to a certain idol. After his death his sons partitioned the property. In 1857, B., one of the sons, brought a suit in the late Supreme Court to establish the will and to have the trusts carried into execution. The decree in that suit ordered that the portion so dedicated by the testator should be conveyed to N. C., B. D. N., and K. R. M., as trustees for the idol. In pursuance of this decree a conveyance was settled by the Master, but it was never executed, the parties having come to an agreement to compromise, and executed a deed to that effect on 15th March, 1866. The deed recited that the parties now agreed to compromise certain suits, and to execute mutual releases, &c., as thereafter declared, and then witnessed that the real property belonging to the idol, which the trustees were entitled to hold under the will, was set forth in a schedule, and that it had been agreed that a conveyance should be executed to the plaintiff and others in trust for the idol, and that the same should be duly registered; provision was then made for the settlement of the dedicated portion, when for more than one year, and extending beyond the term of the turn of worship of any one of the parties; and there was a declaration that all leases, &c., made without consent of the parties should only be valid for the turn of worship of such party; that the rents and profits were to pass to, and remain with, the party or parties who should for the time being be entitled to the turn of worship; and that a house of worship should be built for the idol on the land mentioned in the schedule: provision was also made for the forfeiture of interest of any party who should renounce the Hindu religion; and it was declared that a certain portion was not to be considered divided as theretofore, but that it belonged to the plaintiff, and was not liable to be sold. *Held* (reversing the decision of MARKBY, J.), that the document was one which required registration under s. 13 of Act XVI of 1864. **COWAR RAJKUMAR ROY v. COWAR KALIKRISHNA ROY** — — — vii 197

—, ss. 13 and 14—*Lease—Usufructuary mortgage.]* B. sued for possession of certain lands, on a contract embodied in a document which purported to grant B. possession of these lands for a period of six years, on payment of Rs. 99. *Held*, that the document in question was not a lease, but an usufructuary mortgage, and that the consideration-money being less than Rs. 100, its registration under Act XVI of 1864 was merely optional. **ISHAN CHANDRA v. SUJAN BIBI** — — — vii 14

—, s. 15—*Evidence—Admissibility in evidence of unregistered document.]* In a suit for breach of a covenant to register contained in an unregistered mortgage deed, the defendant cannot plead the non-registration of the instrument for the purpose of protecting himself. Such a deed is admissible in evidence

REGISTRATION ACT XVI OF 1864, s. 15—contd.

for a collateral purpose without being registered. **SHAM NARAYAN LAL v. KHI MAJIT MATOE** - - - - - iv F. B. 1

—, s. 16.

See PROMISSORY NOTE.

REGISTRATION ACT XX OF 1866—Suit for money due on mortgage.] In a suit to recover a sum of money due on a mortgage, the mortgage deed, though not registered, was admitted in evidence to prove the debt. **BUTOKRISTO DOSS v. KHETTRA CHANDRA BHUTTACHARJEE**, [vi Ap. 69

2. — *Suit for specific performance.]* The plaintiff lent defendant Rs. 20,000, and received a document in the following terms:—"On demand we promise to pay S. V. Mutu Ramen Chetty and C. T. A. Chiniah Chetty the sum of rupees twenty thousand, value received." Memo.—"For the above promissory note, the grant of the dockyard and offices to be deposited in three days, and a proper agreement drawn out. The time of credit to be one year or eighteen months, the interest at Rs. 1-10 per cent. per mensem." In a suit to compel specific performance and for damages for breach of the agreement contained in the above memo.,—*held*, that the document did not contain an agreement creating an interest in land, and registration was not therefore necessary to render it receivable in evidence under the Registration Act of 1866. **CURRIE v. MUTU RAMEN CHETTY** - - - - - iii A. C. 126

—, s. 2—*Lease to take juice from date trees.]* The right to take juice from date trees is not, according to s. 2, Act XX of 1866, a right to immovable property, but falls under the definition of moveable property. **JALU NAMDAR v. BEICHA NAMDAR** - - - - - iii A. C. 394

—, ss. 2 and 84—*District Court—Jurisdiction of High Court, North-West Provinces.]* For the purposes of Act XX of 1866, "District Court" means "the principal Court of original jurisdiction in a district, and includes the High Court in its ordinary original civil jurisdiction." The High Court of the North-West Provinces, which has no ordinary original civil jurisdiction, is consequently not a "District Court" to which a petition may be presented under s. 84 of the Act, and an order passed by that Court on such a petition, directing the registration of a deed, is made without jurisdiction. **SAH MUKHUN LALL PANDAY v. SAH KOONDUN LALL** - - - - - xv P. O. 228

—, s. 17—*Agreement for a lease.]* An agreement for a lease does not require registration. **BHAIRABNATH KHETTRI v. KISHORI MOHUN SHAW** - - - - - iii Ap. 1
HAJI ABDUL VIDONA JONAS v. HAJI HARBONE ESMILE - - - - - vii Ap. 21

2. — *Deeds of gift.]* All instruments of gift of immovable property must be registered, whatever be the value of the property. **POTONA KOLITA v. MUTIA KOLITA** ii Ap. 46

3. — *Admissibility in evidence.]* The defendant deposited certain title-deeds with

REGISTRATION ACT XX OF 1866, s. 17—contd.

the plaintiff as security for the repayment of Rs. 1,200 lent him by the plaintiff at the time when the deposit was made. On the evening of the same day, the defendant, by way of further security, gave to the plaintiff a promissory note for the amount of the loan, and endorsed thereon the following memorandum:—"For the repayment of the loan of Rs. 1,200 and the interest due thereon of the within note of hand, I hereby deposit with," the plaintiff, "as a collateral security by way of equitable mortgage, title-deeds of my property," &c. *Held*, that the memorandum did not require registration. **KEDARNATH DUTT v. SHAMLALL KHETTRY** - - - - - xi 405

—, s. 17, cl. 4—*Lease at an annual rent.]* A lease for no definite time, but fixing an annual rent (*sone-bosone*) falls within cl. 4 of s. 17 of Act XX of 1866, and must be registered in order to be admissible in evidence. **RAMKUMAR MANDAL v. BRAJAHARI MRIDHA** - - - - - ii A. C. 75

2. — *Immoveable property—Admissibility in evidence.]* A deed by which a defendant covenanted to pay monthly a certain sum "for the use and hire of a steam-engine, boiler, and machinery, sheds, and a bungalow," is one relating to immovable property, and therefore not admissible in evidence without registration. **WINTERSCALE v. GOPAL CHANDRA SEAL**, [iii O. C. 90

—, ss. 17 and 49—*Admissibility in evidence.]* A deed of bye-bil-wafa, or conditional sale, is a deed which, under s. 17 of Act XX of 1866, requires registration before it can become admissible as evidence. But so far as it is a covenant or agreement for the repayment of the money lent on a particular day, it is not an instrument requiring registration; and therefore, for such purposes, notwithstanding s. 49, it is admissible in evidence. **NILMADHUS SING DAS v. FATTEH CHAND SAHA**, [iii A. C. 310

—, ss. 22, 24, 36, 49, & 88—*Proceduro.]* Ss. 22 and 24 of Act XX of 1866 make it imperative that the instruments therein referred to shall be presented for registration within four, or at most eight, months from the date of their execution; but the Act fixes no time within which the registration must be completed. Where the registration of an instrument has been declared by a competent Court to be invalid, the instrument, if originally presented in due time, may again be submitted for registration, although the four months provided by s. 22, Act XX of 1866, and the further period of four months allowed by s. 24, have both expired. A registering officer who registers a deed of sale without the vendor who executed the deed having appeared before him, acts in contravention of s. 36, Act XX of 1866; but there are no words in that section which declare that the registration of a deed under such circumstances shall be null and void. *Quære*.—Whether the words of that section are not merely directory to the registering officer for the benefit of the parties to the deed; and whether his acting

REGISTRATION ACT XX OF 1866, ss. 22, 24, 36, 49, & 58—continued.

without the appearance of the parties as provided by the Act is more than a defect of procedure within the meaning of s. 88? In considering the effect to be given to s. 49, Act XX of 1866, that section must be read in conjunction with s. 88 and with the words of the heading of Part X, "Of the effects of registration and non-registration." It is not clear that the words of s. 49, "unless it shall have been registered in accordance with the provisions of this Act," are not confined to the procedure on admitting to registration, without reference to any matters prior to registration, or to the provisions of ss. 19, 21, or 36, or other provisions of a similar nature. **SAH MUKHUN LALL PANDAY v. SAH KOONDUN LALL,**

[XV P. C. 228]

—, s. 32.

See APPEAL.

—, s. 48.] Where possession of immovable property has been given under an unregistered lease, a subsequent grantee of a registered lease cannot maintain a suit to evict the lessee in possession, on the ground of the priority of his deed under s. 48, Act XX of 1866. **NAR-SING PORKEAT v. MUSSAMUT BEWAH,**

[v Ap. 86]

—, s. 49—*Admissibility in evidence of unregistered document.*] The defendant deposited certain title-deeds with the plaintiff as security for money due on a bond executed by the defendant in favor of the plaintiff. The deeds were sent with the following letter from the defendant to the plaintiff's attorney;—"I have the pleasure of handing to you the title-deeds of a house, 56, Lower Circular road, as a collateral security for Rs. 20,000, which falls due this day. Please accept them from my manager." In a suit for an account of what was due to the plaintiff on the security of the deeds,—*held*, that the letter needed registration as being a document which created an interest in land, and therefore being unregistered was inadmissible in evidence. **DWARKA-NATH MITTER v. SARAT KUMARI DAS** vii 55

2. — *Deed of sale—Acknowledgment of debt.*] An unregistered deed of sale so far as it is a receipt or acknowledgment of money paid, or an acknowledgment for old debts, is admissible in evidence, notwithstanding s. 49, Act XX of 1866. A portion of an unregistered document requiring registration is admissible in evidence, when such portion does not relate to immovable property. **SHIB PRASAD DAS v. ANNA PURNA DAYI** — — — iii A. C. 451

3. — *Bond.*] An unregistered document requiring registration as affecting an interest in land is admissible in evidence for any purpose for which registration is unnecessary. **LACHMIPAT SINGH DUGAR v. MIRZA KHAIRAT ALI** — — — v F. B. 18

4. — *Priority—Possession.*] A registered deed cannot, under s. 49, Act XX of 1866, prevail against an unregistered deed under which possession has been delivered to the

REGISTRATION ACT XX OF 1866, s. 49—contd.

alienee. **SELAM SHEIKH v. BAIDOMATH GHATAK** — — — iii A. C. 312

—, ss. 50 and 100—*Priority.*] A. purchased certain lands in 1866, and duly registered his bill of sale. B. had purchased the same lands in 1855 from the persons through whom A.'s vendors made their title, and had been in possession ever since, but had not registered his bill of sale, as he might have done, under s. 100 of Act XX of 1866. A. sued to obtain possession. *Held*, B. was not bound to register, and his title was good against A. **GIRIJA SINGH v. GIRIDHARI SING** — — — i A. C. 14

2. — *Lease to take juice from date trees—Priority.*] A registered lease to take juice from date trees cannot, under s. 50, Act XX of 1866, have a priority over an unregistered one of a prior date. **JALU NAMDAR v. BEICHA NAMDAR,**

[iii A. C. 394]

3. — *Priority—Finding of fraud or collusion.*] A Judge should record a distinct finding of fraud or collusion on the part of the holder of a registered deed, with the grounds on which it proceeds, before he gives an unregistered deed priority over it, and unless he does so, the case will be remanded to him for retrial. **GOURI KANT ROY v. GIRIDHAR ROY,**

[iv A. C. 8]

4. — *Priority.*] A. lent B. Rs. 75, on 6th Asar, 1273 (June 19th, 1866), and B. executed a mortgage of two bigas of land, for the amount, in A.'s favour. On 23rd Asar (July 6th) B. sold to C. one biga of the same land. A.'s mortgage was not registered. C.'s deed of sale was. A. subsequently brought a suit for the amount owed him by B., and sought to attach the land mortgaged to him in execution. C. preferred a claim to the property attached, on the ground that the land was his; his petition was allowed. A. now sued to have the property mortgaged to him sold in execution of his decree, and to set aside C.'s purchase. *Held* that, under ss. 18 and 50, Act XX of 1866, C.'s registered deed of sale must have preference over A.'s unregistered mortgage. **GAYAKM MAZUMDAR v. MADHUSUDAN MAZUMDAR** — — — iv Ap. 73

5. — A. entered into an agreement with B. to convey to him a certain portion of land for a consideration of Rs. 98, of which Rs. 60 had been paid as earnest-money. The agreement contained a proviso that, on A.'s refusal to convey the property within the time mentioned in the agreement, this document should operate as a conveyance, and A. should forfeit his claim to the balance of the consideration. Before the expiry of the time mentioned in the agreement, A. sold, by a registered deed, a portion of the property mentioned in the agreement. In a suit by B. for possession of the property and for a declaration that the agreement operated as a conveyance, *held*, that, under c. 1, s. 18, and s. 50 of Act XX of 1866, the subsequent registered conveyance had priority over the unregistered agreement. **SHAMA-CHARAN NEOGI v. NABINCHANDRA DHOBA,**

[vi Ap. 1]

REGISTRATION ACT XX OF 1866, ss. 50 and 100
—continued.

6. — *Priority—Possession.*] A mortgaged a tank in 1859 to the plaintiff. The mortgage was never registered. A. in 1867 sold the tank to C., and executed a deed of sale thereof. The deed of sale was duly registered, and C. had been ever since in possession under it. The plaintiff sued A. on his mortgage, and in that suit C. intervened and was made a defendant. A. did not appear in the suit. *Held*, that C. having registered his deed of sale, and being in possession, his title was good against the plaintiff. *Girija Sing v. Gridhari Sing* distinguished. *SOODHARAM BHUTTACHARJEE v. ODEOY CHUNDER BUNDOPADHYA* - - - x 380

7. — *Optional registration—Priority.*] A deed the registration of which is not absolutely requisite under s. 49 Act XX of 1866, is not entitled to priority to a duly registered kobala under s. 50 of that Act. *MOFUZEL HOSSAIN v. GOLAM AMBIAH* - - - x 381 note

—, ss. 52 and 53.

See SMALL CAUSE COURT, PRESIDENCY TOWNS.

—, s. 53.

See MORTGAGE.
RES-JUDICATA.

2. — A registered deed of sale, of which registration was compulsory, does not take effect against a prior unregistered mortgage bond in respect of the same land the registration of which, it being for a sum under Rs. 100, was optional. *RYASUTULLA v. DURGA CHURN PAL* - - - - - xv 294

3. — *Summary application—Assignee of bond.*] A summary application under s. 53 of Act XX of 1866 by the assignee of a bond cannot be entertained. *GOURMOHUN DASS v. RAMRUP MAZOOMDAR* - - - i A. C. 42

4. — *Bond—Instalment.*] A bond, payable by instalments, stipulated that, in case of default in payment of two successive instalments, the whole amount secured should become due. *Held*, that a petition in a summary way could not be presented under s. 53 of Act XX of 1866. *IN THE MATTER OF THE INDIAN REGISTRATION ACT, 1866, AND IN THE MATTER OF LACHMIPAT SING DUGAR ROY* ii O. C. 151

5. — *Bond—Appeal.*] A petition for payment of a bond, which had been specially registered under Act XVI of 1864, was presented on the 3rd April, 1866. *Held*, that it must be considered as having been presented under s. 53 of Act XX of 1866, by virtue of the 3rd section of that Act, which repealed Act XVI of 1864; consequently the decision of the Principal Sudder Ameen, to whom the petition was presented, was, under s. 55 of Act XX of 1866, final. There could be no appeal from that decision, therefore the Judge had no jurisdiction to reverse the Principal Sudder Ameen's decision. *GRISH CHUNDEA DUTT v. BUZUL-UL-HUQ* - - - - - iii A. C. 68

—, ss. 52 and 55—*Specially registered bond—Setting aside of summary decree.*] A decree obtained by the plaintiff upon a specially

REGISTRATION ACT XX OF 1866, ss. 53 and 55
—continued.

registered bond under Act XX of 1866, and set aside under s. 55 of that Act,—*held*, not to bar a regular suit upon the bond. *UTSHAB NARAYAN CHOWDREY v. CHITTRA RAKA GUPTA*,

[viii Ap. 92

—, s. 53—*Refusal to register—Specific performance, suit for.*] A. brought a suit in the Munsif's Court against B. and C., alleging that they had sold outright to him by sakobala certain landed property for Rs. 300, which was duly paid, and the kobala was executed; that possession was given to him; that B. and C. set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money, had not been embodied in the deed, and that part of the consideration-money was still unpaid; that, therefore, the Registrar refused to execute the deed; that in fact there was no such stipulation as set up by B. and C., and that the whole of the purchase-money was paid; and it was stated in the conclusion of the plaint, that the suit had been instituted to set aside the fraudulent objections, and to establish the full title of A. as purchaser. *Held* (MITTER, J., dissenting), that the suit would not lie. The unregistered deed could not be admitted in evidence, nor parol evidence of the contract be given under which A. alleged that he acquired his title. A. ought to have proceeded under s. 83 of Act XX of 1866. *RAHMATULLA v. SARIUTULLA KAGCHI* i F. B. 58

2. — A. sued B. to enforce registration of a potta, on the allegation that the Registrar had refused registration, on the ground that B. denied before him the execution of the deed. *Held* that, under Act XX of 1866, a suit would not lie. A. should have proceeded under S. 83 of the Act. *TULSI SAHU v. MAHADEO DOSS* - - - - - ii A. C. 105

—, s. 53 and 84.

See APPEAL.

—, s. 84—Where a deed, which ought to be registered, is refused registration, the party aggrieved should proceed under s. 84 of Act XX of 1866; and if this course is not pursued, he cannot make use of the document as evidence in a civil suit brought by him to enforce specific performance of the terms of the deed, and to set aside a subsequent deed as fraudulent. *FATI CHAND SAHU v. LILAMBER SING DAS*,

[ix P. C. 433

2. — *Suit on bond—Failure to register, according to agreement—Cause of action.*] A. executed a bond in favour of B., but failed to cause the registration of the same. Before the amount secured by the bond became due, B. sued A. for recovery thereof, on the ground that, as A. had agreed to get the bond registered, but failed to do so, B. was entitled to recover the amount advanced by him. *Held*, that B. had no cause of action. *GURU PRASAD ROY v. RAI BABOO DHANPUT SING* v Ap. 46

See THE COURT OF WARDS v. NITTA KALI DEBI - - - - - ii A. C. 353

REGISTRATION ACT XX OF 1866, s. 84—contd.

3. — *Suit for possession, for damages for refusal to register, and for enforcing registration—Effect of execution of deed required by law to be registered.* The owner of a share in a talook granted a se-patni thereof to the plaintiff, but before registration, granted a se-patni to the Bengal Coal Company. In a suit against the owner and the Company for possession of the se-patni talook, for damages caused by the refusal to register, and also for compelling registration of the se-patni potta,—*held*, that the suit was not maintainable in a Civil Court, as the plaintiff's title rested upon an unregistered deed; that there was no cause of action as against the Company to enforce registration of the potta; and that a distinct stipulation is not necessary to bind a person to cause registration of a deed required by law to be registered, but he virtually agrees to do so when he executes a contract, which by the law in force requires registration. **PRABHURAM HAZRA v. ROBINSON** — — — *iii Ap. 49*
But *see* **TRIPURA SUNDARI v. BASIK CHANDRA KANUNGUI** — — — *vi Ap. 134*

4. — *Refusal to register—Duty of Registrar.* Under Act XX of 1866, a Registrar has no power to refuse to register a deed, on the ground that the full consideration there mentioned has not been paid. His duty is, when the parties appear in person before him, simply to ascertain whether the deed has been executed by the persons by whom it purports to have been executed. **IN THE MATTER OF BRINDABUN CHANDRA SHAW AND OF THE PETITION OF BRINDABUN CHANDRA SHAW AND NOBODEEP CHANDRA SHAW** — — — *i O. C. 47*

5. — *Refusal to register — Denial of execution.* A. applied to a Registrar to have a deed of sale registered, alleging it to have been executed in his favour by B. who denied the execution. The Registrar refused to register the deed. A. then applied to the Judge by petition, under s. 84 of the Registration Act, to order the registration of the deed, alleging that B. had falsely denied the execution of the deed. The Judge dismissed the petition, on the ground that he had no authority to examine witnesses in the matter, or to determine whether the deed of sale was executed or not. *Held* (MACPHERSON, J., *dubitante*), that the Judge had wrongly refused jurisdiction. He ought to have examined witnesses as to whether or not the deed was really executed. The petition to the Judge was not an appeal from the officer who refused to register the deed, but an original application to the Judge for an order to compel the Registrar to register. The words "appealed against," in s. 84 of the Registration Act, only mean "complained of," or "objected to." **IN THE MATTER OF THE PETITION OF SANKAR DOBEY** *iv A. C. 66*

6. — *Refusal to register—District Court.* Although the Registrar-General may have a discretion to refuse to register without endorsing his refusal on the document, yet, in cases where he does so endorse his refusal, the last clause of s. 82 is applicable, and the case

REGISTRATION ACT XX OF 1866, s. 84—contd.

falls within the provisions of s. 84; the party aggrieved has a right of petition to the District Court. Where the property, the subject of a deed presented for registration, was without the jurisdiction of the High Court, but the order of refusal was made by the Registrar-General, who was within such jurisdiction,—*held*, the High Court was the District Court under s. 84 to which the petition should be made. **IN THE MATTER OF THE INDIAN REGISTRATION ACT (XX OF 1866), AND IN THE MATTER OF WYNNDHAM** — — — *vi 576*

7. — A deed of sale of land situated in the Registration District of Calcutta was executed and presented by the purchaser for registration. The vendor appeared personally, and admitted execution, but refused to endorse the deed, on the ground that she did not intend to sell, but only to renew a certain deed of mortgage. The Registrar refused to register the deed. The purchaser petitioned under s. 84 of the Indian Registration Act, Act XX of 1866. It was objected, on behalf of the vendor, that an appeal should have been first made to the Registrar-General in accordance with the proviso in s. 83 of the Act, as the refusal was made by the Registrar as Sub-Registrar. *Held*, that the proviso in s. 83 applies solely to the case where the Registrar for a district, including a presidency town, passes an order on an application which relates to such a portion of his district as is not included in a sub-district. The order so passed becomes the order of a Sub-Registrar, and is not within the words of s. 84, which give a right of petition to the District Court; but in such case an appeal first lies to the Registrar-General. There being no evidence that the premises which were the subject of the deed of sale were situated in a part of Calcutta not formed into a sub-district, the Court will infer that the order was made by the Registrar as Registrar, not as Sub-Registrar. The Registrar was justified in refusing to register the deed, on the ground that the vendor, one of the parties to it, refused to endorse it. **IN THE MATTER OF THE INDIAN REGISTRATION ACT AND BRAJANATH PYNE AND ARMALA DAS** — — — *iii O. C. 60*

—, ss. 93 and 94.

See FALSE PERSONATION.

2. — *Trial by Magistrate of charge instituted by him as Sub-Registrar.* The proceedings of a Magistrate who tries prisoners charged with having committed offences under ss. 93 and 94 of the Indian Registration Act, XX of 1866, are not illegal and without jurisdiction, or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his capacity of Sub-Registrar. Under such circumstances, where it can be done, it would be better if the case were tried by some other person. **QUEEN v. HIRA LALL DAS**, *viii F. B. 423*
IN THE MATTER OF RAMDYL SING, *v Ap. 89*
Contra, **IN RE BHARAT CHUNDRA SEN**,

[*viii 423 note*]

REGISTRATION ACT XX OF 1866—continued.

—, s. 95 — *Offence under Registration Act—Jurisdiction of Sessions Judge.* The Sessions Judge has jurisdiction to try a case of abetting false personation of a witness before a Registrar of Assurances, under s. 95 of the Registration Act (XX of 1866). The word 'instituted' in that section should be construed to mean 'commenced.' **QUEEN v. SHEGOLAM DASS** - - - vi F. B. 692

Contra, **QUEEN v. ASANULLA** - vi 693 note

2. — *Offence under Registration Act—Sanction of prosecution.* A Sub-Registrar under Act XX of 1866 has no power to investigate regarding the committal of an offence committed before him in the registration of any document, but should cause the complainant to proceed, under s. 66 of the Code of Criminal Procedure, before the Magistrate, or before an officer authorized to receive such complaint. The sanction of the Registrar under s. 95, Act XX of 1866, relates to a prosecution to be instituted by the Sub-Registrar for an offence under the Act. **QUEEN v. HARIDAS KUNDU** - - - iv Ap. 69

REGISTRATION ACT VIII OF 1871, s. 18, cls. 1 & 2, s. 50—Priority of registered over unregistered document—Compulsory and optional registration. A registered deed of sale, of which registration was compulsory, does not take effect against a prior unregistered mortgage bond in respect of the same land, the registration of which, it being for a sum under Rs. 100, was optional. **RYASUTULLA v. DOORGA CHURN PAL**, [xv 294

—, ss. 23, 24, 35, 71, and 73—*Refusal to register—Effect of nonappearance within prescribed time.* When a document has been presented for registration in due time by one of the executants, but the others have failed to appear within the time prescribed, the registering officer must "refuse to register," as in cases falling under the latter clauses of s. 35, and must record the reasons for his refusal. The party desiring registration ought to apply to the Registrar before the period for registration has gone by, either to register or to refuse to register, so as to enable him, in case of refusal, to take further proceedings under s. 73. So soon as it appears that the prescribed time has gone by, and the executing parties have not appeared, the order of refusal should be made at once. **IN THE MATTER OF THE REGISTRATION ACT, 1871, AND IN THE MATTER OF BUTTOBEHARY BANERJEE** - - - xi 20

—, s. 73.
See REVIEW.

—, s. 82—*Evidence Act (I of 1872), s. 3—Sub-Registrar—Offence committed during a judicial proceeding—Meaning of word "Court"—Penal Code, s. 228.* By s. 82 of the Registration Act, a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of s. 228 of the Penal Code, and as he is legally authorized to

REGISTRATION ACT VIII OF 1871, s. 82—contd. take evidence, he is a "Court" as defined by the Evidence Act, s. 3. **IN THE MATTER OF THE PETITION OF SARDHARI LAL** - xiii Ap. 40

REGISTRATION OF PETITION OF APPEAL.
See CIVIL PROCEDURE CODE, s. 341.

REGISTRATION OF TRANSFER.
See BENG. ACT VI OF 1862, s. 4.
RES-JUDICATA.
SALE FOR ARREARS OF RENT.

REGISTRY TICKET, POSSESSION OF.
See PROSTITUTES.

REG. III OF 1793.
See LIMITATION REG. III OF 1793.

—, s. 8.
See DECLARATORY DECREE, SUIT FOR.

REG. IV OF 1793, s. 2.
See REG. XLVIII OF 1793, s. 24.

REG. VIII OF 1793, s. 46—Suit for recovery of malikana. A suit for recovery of malikana is barred by limitation if the malikana has not been received for a period of twelve years. *Quare.*—Whether, under Reg. VIII of 1793, s. 46, a suit for recovery of malikana will lie at all? **BHULI SING v. NEHMU BEHU**, [iv A. C. 29

—, s. 51.
See ENHANCEMENT OF RENT.
ONUS PROBANDI.
SALE FOR ARREARS OF REVENUE.

REG. XV OF 1793.
See MESNE PROFITS.
MORTGAGE.

—, ss. 8 and 9—*Maintenance of suit—Usury.* Reg. XV of 1793, ss. 8 and 9, forbids the maintenance of any suit arising out of an usurious transaction. **WISE v. JAGABANDHU BOSE**, [ii P. O. 69

—, ss. 9 and 10—*Interest—Usury.* Interference with the rate of interest in India was a thing of positive law, and cannot be extended beyond the provisions of the Regulation (XV of 1793). S. 9 of the Regulation does not declare that where an attempt has been made to elude the usury laws the contract is itself void, nor does it direct the return of the pledge without redemption. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent., the maximum allowed by s. 10 of the Regulation. **SHAH MAKHUNLAL v. SRIKRISHNA SINGH** ii P. C. 44

REG. XIX OF 1793, s. 10.
See GRANT OF LAND RENT-FREE BY ZEMINDAR.
LANDLORD AND TENANT.
LIMITATION ACT X OF 1859.
REG. II OF 1805.
RESUMPTION.

REG. XXVI OF 1793, s. 2.
See MAJORITY, AGE OF.

REG. XLIV OF 1793.
See GHATWALI TENURE.

REG. XLIV OF 1793, s. 5.

See SALE FOR ARREARS OF REVENUE.

REG. XLVIII OF 1793, s. 24—Reg. IV of 1793, s. 9—Jurisdiction of Collector.] S. 24, Reg. XLVIII of 1793, and s. 9, Reg. IV of 1793, direct the Zillah and City Courts to transmit their decrees to the Collector, but do not authorize those Courts to make any orders on the Collector as to how he shall enter the result of such decrees in his books. *NIMDHARI SING v. KACHUN SING* - - - - - iv Ap. 44

—, s. 24, cl. 2.

See LIMITATION ACT XIV OF 1859, s. 20.

REG. XVI OF 1797, s. 4.

See EXECUTION OF DECREE.

REG. I OF 1798.

See MESNE PROFITS.
MORTGAGE.

REG. V OF 1799, s. 5.

See LANDLORD AND TENANT.

REG. VII OF 1799.

See LIMITATION REG. VII OF 1799.

2. — *Decree — Act VIII of 1859, s. 206.]* S. 206, Act VIII of 1859, does not apply to decrees under Reg. VII of 1799. *GOPAL CHANDRA DEY v. PEMU BIBI*,

[i A. O. 76

3. — *Reg. VIII of 1831—Repeal, effect of.]* A summary suit for rent under s. 15, Reg. VII of 1799, was pending when Act X of 1859 came into force, and was, therefore, governed by Reg. VIII of 1831, s. 4 of which declared that the decision in the summary suit should be final, subject to a regular suit. By s. 1, Act X of 1859, Reg. VII of 1793, ss. 1 to 20, and Reg. VIII of 1831 were repealed, except as to proceedings commenced before the date of the Act coming into force. *Held*, that the repealing section did not take away the right to bring a regular suit. *GOBIND CHUNDER MOOKERJEE v. KALLA GAJEE* - - - Sup. Vol. 626

REG. II OF 1805, s. 3 — Reg. XIX of 1793—Lakhtiraj—Adverse possession — Limitation.] *Held* that, under s. 3, Reg. II of 1805, possession of land for a period upwards of sixty years since the passing of Reg. XIX of 1793, without payment of rent, bars the remedy of the zemindar to dispossess the holder, or to resume the land as *mâl*. *KASINATH KOOWAR v. BANKUBEHARI CHOWDHRY* iii A. C. 446

REG. XVII OF 1806.

See MORTGAGE.

ONUS PROBANDI.

—, s. 8—*Notice of foreclosure—Year of grace.]* The year mentioned in s. 8 of Reg. XVII of 1806 is to be reckoned from the date of the service of the notice of foreclosure under that section. *MAHESH CHANDRA SEN v. TARINI* - - - - - i F. B. 16

REG. XIX OF 1810.

See ACT XX OF 1863.

REG. V OF 1812, s. 26.

See APPEAL.

REG. V OF 1812, s. 26—continued.

2. — *Reg. V of 1827—Manager of joint undivided estate—Power of Judge.]* A Judge has power to order the person appointed under Reg. V of 1812, s. 26, and Reg. V of 1827, to manage an estate, to make over the surplus, after payment of revenue and other outgoings, to the person or persons entitled to receive the same. IN THE MATTER OF THE PETITION OF THE COLLECTOR OF RUNGPORE - Sup. Vol. 656

REG. XIX OF 1814.

See PARTITION.

SALE FOR ARREARS OF REVENUE.

—, s. 9.

See ENHANCEMENT OF RENT.

REG. V OF 1817—Hidden treasure—Duty of finder of hidden treasure—Rights of finder, Zemindar, and Government.] Some persons while digging a field in a certain zemindari found an earthen pot containing money. The finder and the zemindar both claimed to be entitled to the treasure, but the provisions of Reg. V of 1817, with regard to the finding of hidden treasure, were not complied with by them, and on this ground the Judge held they were not entitled to it. The Government claimed the money on the ground that the provisions of the Regulation had not been complied with, and it was made over to the Collector, an appeal to the High Court being dismissed. IN RE UMA CHARAN BANERJEE, [vii Ap. 3

REG. III OF 1818.

See ACT OF STATE.

HABEAS CORPUS.

2. — *Validity of — Act XXXIV of 1850 and Act III of 1858—Arrest of native subject—Power of Indian Legislature—13 Geo. III, c. 63, s. 36—37 Geo. III, c. 142, s. 8—21 Geo. III, c. 70—3 and 4 Will. IV, c. 85, s. 43.]* Reg. III of 1818 was applicable only to natives and those subject to the jurisdiction of the Provincial Courts. It was passed under 37 Geo. III, c. 142, s. 28, not 13 Geo. III, c. 63, s. 36. It was passed by a legislative authority having full power in that behalf. Considering the circumstances under which it was enacted, Act III of 1858, which extended the effect of that Regulation to Calcutta, was not *ultra vires*. IN THE MATTER OF AMEER KHAN - - - - - vi 392

3. — Assuming the power of a Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ,—*held* that, it appearing that the prisoner was in custody under a warrant in the form prescribed by Reg. III of 1818, the detention was legal. The detention to be legal need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. The Regulation is not confined to prisoners of war or foreigners held in confinement for political reasons. The substance of Reg. III of 1818 was expressly re-enacted by Act XXXIV of

REG. III OF 1818—continued.

1850 and Act III of 1858, and therefore, as the result of these later Acts alone, the detention would be legal. Those Acts are not contrary to the powers conferred on the Indian Legislature by 3 & 4 Will. IV., c. 85, s. 43. IN THE MATTER OF AMEER KHAN - 4 - vi 459

4. — *Warrant of arrest and commitment under—Effect of.*] The Governor-General, in issuing a warrant of commitment under Reg. III of 1818, does not in any way act judicially or as a Court of Justice, nor is he to be considered as having adjudicated that the person placed under personal restraint had been guilty of some specific offence. The proceeding is not in the nature of a conviction of the person placed under restraint, therefore, the person so placed under restraint cannot, in any future proceeding taken against him, plead that he has been already tried, convicted, and punished. QUEEN v. AMEER KHAN - ix 36

REG. II OF 1819, RESUMPTION OF MEHAL UNDER.

See PARTIES.

REG. II OF 1819.

See SETTLEMENT.

—, s. 28.

See SANAD.

—, s. 30.

See LANDLORD AND TENANT.
LIMITATION ACT X OF 1859.
RESUMPTION.

REG. VIII OF 1819.

See SALE FOR ARREARS OF RENT.

2. — *Sale of patni estate—Notice of sale—Suit to set aside sale.*] It is essential to the validity of a sale, held under Reg. VIII of 1819, of a patni estate for arrears of rent, that the notices of sale prescribed by cl. 2, s. 8 of the Regulation should have been all duly and regularly published as therein directed. BAIKANTHA NATH SING v. DHIRAJ MAHATAB CHAND, [ix 87

HARANATH GUPTA v. JAGANNATH ROY CHOWDREY - ix 89 note

And as to what amounts to publication of notice. RAGHAB CHANDRA BANERJEE v. BRAJANATH KUNDU CHOWDHRY - ix 91 note

— s. 8, cl. 2—“Substantial persons”—*Service of notice.*] The provisions of cl. 2, s. 8, Reg. VIII of 1819, with regard to the notification of the sale of a patni talook for the arrears of rent under the Regulation, that the serving peon shall “bring back the receipt of the defaulter or of his manager for the same, or, in the event of inability to procure this, the signature of three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot,” are merely directory, and where there is proof that the notice was in fact served, the sale will not be vitiated by non-compliance with any of these provisions, e.g., as where one of the witnesses attesting the service of the notice turns out not to be “substantial.” A respectable man, of good

REG. VIII OF 1819, s. 8, cl. 2—continued.

character, living and well known in the neighbourhood, may properly be considered a “substantial person,” within the meaning of cl. 2, s. 8 of the Regulation. It is too limited a construction of that clause to hold that the word “substantial” must be taken to mean a wealthy man, from whom damages could be recovered by the patnidar, supposing the attestation to be false. RAMSABUCK BOSE v. KAMINRE KOOMAREE DOSSEE - xiv P. C. 394

2. — *Transfer of tenure.*] A transfer of his tenure by a patnidar is not binding on the zemindar, unless made strictly in accordance with the provisions of Reg. VIII of 1819. WATSON v. COLLECTOR OF RAJSHAHYE, [iii P. C. 48

— s. 18, cl. 4.

See LIMITATION REG. VII OF 1799.

REG. VII OF 1822.

See GOVERNMENT OFFICERS, ACTS OF.

REG. XI OF 1822.

See SALE FOR ARREARS OF REVENUE.

REG. I OF 1824.

See RAILWAY COMPANY.

REG. IX OF 1825.

See THAKBUST AWARD.

REG. XI OF 1825.

See ACCRETION.
ACT IX OF 1847.

REG. XIV OF 1825, s. 8.

See SANAD.

REG. XX OF 1825.

See JURISDICTION OF CRIMINAL COURT.

REG. V OF 1827, s. 3.

See REG. V OF 1812.
LANDLORD AND TENANT.

REG. III OF 1828.

See SUNDERBUNS BOUNDARY.

REG. VIII OF 1831.

See REG. VII OF 1799.
SALE FOR ARREARS OF RENT.

REG. VII OF 1832.

See MAHOMEDAN LAW, DOWER.

REG. XIII OF 1833.

See JURISDICTION OF CRIMINAL COURTS.

REGULATION LAW.

See ACT OF STATE. •

RE-HEARING.

See BENG. ACT VIII OF 1869, SS. 34 AND 103.

DEATH OF JUDGE BEFORE JUDGMENT.

PRIVY COUNCIL, PRACTICE OF.

RELIEF—*Prayer for general relief—Plaint.*] Upon a prayer for general relief, a plaintiff is not entitled to any relief which is inconsistent with his plaint; therefore, where a plaintiff brought a suit to set aside his father's will, on the ground that he had no power to dispose of his property, but that the plaintiff was entitled as eldest son and heir-at-law accord-

RELIEF—continued.

ing to Hindu law, the suit should have been dismissed with costs, and no account should have been decreed to the plaintiff in respect of his interest in a portion of the property, the bequest of which was, in the opinion of the Court below, void for remoteness. **HIRALAL MULLICK v. MATILAL MULLICK** - v 682

2. — *Special relief.*] Where a plaintiff mistakes the relief to which he is entitled in his special prayer, the Court may afford him the relief to which he has a right under the prayer for general relief, provided it is such relief as is agreeable to the case made by the plaintiff. **NISTARINI DAS v. MAKHANLALL DUTT** - - - - - ix 11

3. — Although the plaintiff was found not to be entitled to the special relief prayed for, the Court considered he had established a case, in which, upon the plaintiff and the general prayer for relief, he was entitled to a decree. **GOBIND CHUNDER MOOKERJEE v. DOORGA-PERSAD BABOO** - - - - - xiv 337

RELINQUISHMENT BY MOTHER OF HER INTEREST IN PROPERTY.—*Subsequent suit to recover estate as heiress of son.*] A widow, being old, presented a petition in a suit by her daughter-in-law, as guardian of the former's infant son, relinquishing all her rights in the property to the daughter-in-law herself, and as guardian of the infant. The son died, and the mother now sued her daughter-in-law for possession as heiress of her son. *Held* that, by the petition, the mother had transferred no rights to the daughter-in-law as proprietor, but that the mother, as heiress of her son, was entitled to the estate. **UDEY KUNWAR v. MUHAMMAD LADU** - - - - - vi P. C. 283

RELINQUISHMENT, NOTICE OF.

See BENG. ACT VIII of 1869, s. 20.

RELINQUISHMENT OF CLAIM.

See ADMISSION.

CIVIL PROCEDURE CODE, s. 7.
VAKIL.

REMAND.

See CIVIL PROCEDURE CODE, s. 148.
ISSUES.
STAMP.

2. — *Pleadings—Jurisdiction.*] When it did not appear on the face of the pleadings, or on the evidence, under what kind of *bastu* the land in dispute fell, and no plea to the jurisdiction of the Court under Act X of 1859 had been taken in the Courts below, the High Court would not remand the case to enquire under which class of *bastu* land the subject-matter of the suit fell, nor entertain the point of jurisdiction in appeal. **NAIMUDDA JOW-WARDAR v. MONCRIEFF** - - - iii A. C. 283

3. — *Act VIII of 1859, s. 352—Ground for remand.*] Where the lower Court had decided a case on the merits, and the Appellate Court did not find that there had been any omission to try any issue or determine any question essential to the decision of the case on the merits, or that further evidence was ne-

REMAND—continued.

cessary to enable it to determine any such issue or question,—*held*, the Appellate Court was in error in remanding the case under s. 352 for a fresh trial. **MAHESH CHUNDRAS v. MADHAB CHANDRA SIEDAR** - ii S. N. xiii

4. — *Appellate Court, Powers of—Objection taken on appeal—Act VIII of 1859, s. 351—Costs.*] A lower Appellate Court is not competent to remand a case for a second decision, except as provided by s. 351, Act VIII of 1859, and therefore has no power to remand a case when a Court of first instance has investigated the merits of the case and passed its judgment upon the evidence. The objection that a case has been improperly remanded by the lower Appellate Court can be taken in special appeal from the decree passed upon the remand, although a special appeal might have been preferred from the order of remand, but the appellants were held not entitled to their costs. **MAJORAM OJHA v. NILMONEY SINGH DEO,** [xiii 198

BRINDABUN DEY v. BISONA BIBER, xiii 200 note

5. — *Application to have witness examined—Omission to make order.*] Where in the first Court, the defendant applied for a witness to be examined, but no order was made on the subject, and on the case coming upon appeal, the Appellate Court, on its notice being called to the omission, remanded the case to the lower Court to entertain the application,—*held*, that there was nothing illegal in such a remand, though the remand sections of Act VIII of 1859 did not expressly apply to it. **BONOMALEE CHURN MYTTEE v. HAFIZUDDIN,** [xiii 247 note

REMAND, CRIMINAL CASES—Criminal Procedure Code (Act VIII of 1869), s. 422—Act X of 1872, s. 282—Power of Appellate Court.] A remand of a case under s. 422, Act VIII of 1869, can only be for the purpose of taking further evidence, and certifying the result thereof to the Appellate Court, and not for the purpose of retrying the case upon such fresh evidence. After remand under this section, the Appellate Court can only try the case as an ordinary appeal, and has no power to enhance the punishment. **ANONYMOUS CASE,** [iii A. Cr. 62

2. — *Criminal Procedure Code, s. 422, and ss. 169 and 171—Jurisdiction of Magistrate.*] When an Appellate Court directs further evidence to be taken by a Subordinate Court under s. 422 of the Code of Criminal Procedure, it is competent to the Subordinate Court before which such evidence is given, if any offence against public justice, as described in s. 169, is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of s. 171. **QUEEN v. BAKTEAR MAIFARAZ** - - - - - vi F. B. 698

3. — *Criminal Procedure Code, s. 422—Omitting to give information of an offence.*] Where a person had been found guilty by a Magistrate of the offence of intentionally

REMAND, CRIMINAL CASES—continued.

omitting to give information of an offence which he was bound to give, and on appeal the Judge found that there had been no evidence given of the omission, *held per* KEMP, J. (GLOVER, J., *contra*), the Judge could not remand the case for additional enquiry under s. 422 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF UDAI CHAND MUKHOPADHYA - - - - - ix Ap. 31

RENT, ARREARS OF.

See INTEREST.

SALE FOR ARREARS OF RENT.

RENT AS DISTINGUISHED FROM REVENUE.

See GRANT OF LAND RENT-FREE BY ZEMINDAR.

RENT, PAYMENT AND ACCEPTANCE OF.

See LANDLORD AND TENANT.
RIGHT OF OCCUPANCY.

RENT, PAYMENT OF.

See ESTOPPEL.
LANDLORD AND TENANT.
TITLE.

RENT, RECEIPT OF.

See ACT X OF 1859, s. 77.
LANDLORD AND TENANT.
UNSETTLED POLLIAM.

RENT, SALE FOR ARREARS OF.

See BENG. ACT VIII OF 1865.
SALE FOR ARREARS OF RENT.

RENT, SUIT FOR.

See CERTIFICATE OF ADMINISTRATION.
CIVIL PROCEDURE CODE, s. 119.
JURISDICTION OF REVENUE COURT.
LANDLORD AND TENANT.
LIMITATION ACT X OF 1859.
PARTIES.
RES-JUDICATA.

2. — *Possession by lessee.*] A suit for rent will not lie where the lessee has never obtained possession of the land leased to him. BULLEN v. LALIT JHA - - - - - iii Ap. 119

3. — *Apportionment of rent.*] Where a tenant held lands in six villages under a patnidar at an admitted rent, and the patnidar subsequently granted dar-patnis to two different parties of two and four of the said villages respectively, the tenant having admitted a certain sum to be the rent payable in respect of the lands situated in the two villages, the rent payable to the dar-patnidar of the four villages was properly estimated as the difference between the admitted rent of the land in all six villages and the admitted rent of the land situated in the two villages. BRAJA LAL ROY v. SAYAMA CHARAN BHUTT, vi 523

4. — *Meane profits — Interest — Rent in kind.*] Where rents were collected in kind instead of in money, and the Judge, in awarding meane profits, allowed a much larger rate of interest than was usually allowed on rents paid in money,—*held*, that he was wrong in so doing. No difference in that respect should be made between rents paid in kind and those paid in money. RAIKISORI DAS v. BONOMALI CHARAN MAITI - - - - - i S. N. xiv

RENT, SUIT FOR—continued.

5. — *Beng. Act VIII of 1869 — Jurisdiction.*] The defendant took from the plaintiff's ancestor a small portion of endowed land for a garden, and in consideration thereof paid him a certain fixed amount of grain for his maintenance and support, and subsequently that payment was commuted into a monthly allowance of Rs. 3-8, which was regularly paid till 1276, and then stopped. To a suit under Beng. Act VIII of 1869, to recover the amount, the defence was that a suit for a claim of such a nature could not be brought under that Act, but the objection was overruled, and the plaintiff held entitled to recover the amount sued for. JALLALOODDEN v. BURNE xv 261 note

RENT, SUIT FOR ARREARS OF.

See BENG. ACT VIII OF 1869.
JURISDICTION OF REVENUE
COURTS.
LIMITATION ACT XIV OF 1859,
s. 1, CL. 8.

RENT, SUIT FOR MONEY PAID AS EXCESS OF.

See SPECIAL APPEAL.

RENT, SUIT FOR SEPARATE SHARE OF.

See CO-SHARERS.

RENUNCIATION OF EXECUTORSHIP.

See EXECUTOR.

REPEAL, EFFECT OF.

See LIMITATION ACT XXV OF 1857.
REG. VII OF 1799.

REPEALING ACT, 1870.

See ACT XIV OF 1870.

REPORT FROM RECORD OFFICE.

See EVIDENCE, CRIMINAL CASES.

REPORT OF AMEEN.

See EVIDENCE, CIVIL CASES.

REPORT OF POLICE.

See COMPLAINT.
EVIDENCE, CRIMINAL CASES.
RECOGNIZANCE TO KEEP THE
PEACE.

**REPRESENTATIVE OF DECEASED DEBTOR,
APPEAL BY.**

See APPEAL.

**REPRESENTATIVE OF DECEASED DEBTOR,
EXECUTION OF DECREE AGAINST.**

See CIVIL PROCEDURE CODE, s. 210.

**REPRESENTATIVE OF DECEASED PERSON,
SUIT AGAINST.**

See LIMITATION ACT XIV OF 1859,
s. 14.

2. — *Assets—Act VIII of 1859, s. 203.*] The plaintiff sued the defendants on the ground that they were in possession of his deceased debtor's property. It being found that the defendants received no assets from the deceased,—*held*, the suit was rightly dismissed. If the suit had simply been against the defendants as heirs or personal representatives of the deceased, and if they had alleged that no assets had come to their hands, the plaintiff would have been entitled to a decree

REPRESENTATIVE OF DECEASED PERSON,**SUIT AGAINST—continued.**

against them as representatives of the deceased (if he had prayed for such a decree), without going to a trial on the question whether or not the defendants had assets; and in that case he might have proceeded, in enforcement of his decree, under the provisions of s. 203, Act VIII of 1859. **IN THE MATTER OF THE PETITION OF HIRALAL MOOKERJEE,** [vi Ap. 100]

RESALE OF GOODS, NOTICE OF.

See **CONTRACT ACT**, s. 73.

RESIDENCE.

See **INSOLVENT ACT**, s. 5.

RESIDENCE, CONDITION FOR.

See **WILL**.

RESIDENCE, RIGHT OF.

See **HINDU LAW, FAMILY DWELLING HOUSE.**

HINDU LAW, MAINTENANCE.

RESISTANCE OF PROCESS OF CIVIL COURT.

See **CONTEMPT OF COURT**.

RESISTING EXECUTION OF DECREE.

See **CIVIL PROCEDURE CODE**, s. 229.

RES-JUDICATA.

See **CIVIL PROCEDURE CODE**, s. 14.

FRAUD.

HINDU LAW, ENDOWMENT.

LIMITATION ACT XIV OF 1859,
s. 1, CL 6.

2. — *Suit for confirmation of possession and declaration of title.*] A. brought a suit for a debt against B., obtained a decree, and attached certain land in execution. C. intervened, claiming the property as his; but, on the 28th March, 1868, his claim was disallowed, on the ground that in two suits previously brought against C. and others for possession of the same property, on the 30th December, 1863; by X. and Y., whose interest had, pending the suit, been purchased by B., it had been decreed that the land belonged to B. The decrees in these suits were dated 13th and 19th January, 1864; they were in favour of B. and ran in his name alone. C. had purchased a moiety of the property at an auction-sale on the 7th March, 1859; X. and Y. claimed under a pre-existing mortgage over the same property, the equity of redemption under which had been foreclosed. C. now brought a suit against A. and B. for confirmation of his possession, and a declaration of his title to the property. He alleged that B. was his servant, and had purchased the interest of X. and Y. in the property benami for him; that he (C.) had made the purchase with his own money in the name of B.; that the suits, originally brought by X. and Y. had really been compromised; that while the decrees of the 13th and 19th January, 1864, were nominally in favour of B., they were really in his (C.'s) favour; and that the suit brought by X. and Y. had been allowed to proceed in B.'s name, in order that C.'s title might be strengthened by a decree in his favour, B. being only nominally the decree-

RES-JUDICATA—continued.

holder. C. also stated that, since his purchase on 7th March, 1859, he had always been in possession, and he dated his cause of action from the 28th March, 1868, when his claim to the property which had been attached by A. in his suit against B. was disallowed. The Subordinate Judge gave a decree in favour of the plaintiff C. B. alone appealed to the High Court. *Held*, that C. not having been disturbed in his possession, and seeking a declaration of his title only and no relief, should have stated clearly and precisely what that title was; that as against A., who had not appealed, the decision of the Subordinate Judge was final; that as between B. and C. the matter was *res adjudicata*; that C. could not go behind the decrees of the 13th and 19th January, 1864, which had been passed in favour of B., and show that the purchase by B. and subsequent decrees were really benami for C., and in his favour. **BHAWABAL SINGH v. RAJENDRA PRATAP SAHAY** - - v 331

3. — *Civil Procedure Code, s. 2—Suit for rent.*] A. sued B. and C. in the Civil Court to recover possession of certain lands, of which he alleged that they had dispossessed him, under a decree obtained by them in a suit in which he had previously sued B. in the Civil Court, before Act X of 1859 had been passed, for rent, in which suit C. had been added as a party, and had proved his title to the lands against A. *Held*, that A.'s suit must fail, on the ground that it involved a material issue of fact which had already been determined by a Court of concurrent jurisdiction in the former suit, which was between the same parties, and which issue disposed of the present suit. **CHOWDHARI NILKANTH PRASAD SINGH v. DIGNARAYAN SINGH** - - 1 A. C. 30

4. — *Adoption.*] A. claimed certain property as the adopted son of B., and it was decided in that suit that A. had failed to prove that he was the adopted son of B. *Held*, that this decision was no legal bar to A.'s proving in another suit that he was the adopted son of B., in which A. sought to obtain a different property upon a different cause of action, though the parties to the suit were the same. **KRIPARAM v. BHAGAWAN DAS,** [1 A. C. 68]

5. — *Civil Procedure Code, s. 2—Cause of action—Adoption.*] A., a Hindu of Gya, died, leaving a sister, B., and C., the son of a deceased sister. On A.'s death B. took possession of the property left by A. In a suit by C. against B. for recovery of possession thereof as heir to his maternal uncle, the Court of first instance held that B. should retain possession of the property during her lifetime without power of waste, and that on her death C. should be entitled to the possession thereof. This was reversed by the High Court on appeal, who held that the decree should have been simply a decree of dismissal of the plaintiff's suit. B. died, leaving an adopted son, D. C. sued D. for recovery of possession of the property, the subject-matter of the former suit, on the ground that

RES-JUDICATA—continued.

D. was not the adopted son of *B.*, and that *C.*, who came within the class of bandhus, was entitled to succeed to the property left by *A.* and *B.*, there being no nearer heir in existence. *Held*, that s. 2, Act VIII of 1859, did not bar the suit. *MOHUN LAL BHAYA GYAL v. LACHMAN LAL* - - - - - v 663

6. — *Suit for possession—Act X of 1859, s. 25.* The defendant had obtained an order under s. 25, Act X of 1859, to eject the plaintiff, who now sued in the Civil Court for recovery of possession. *Held*, that s. 2, Act VIII of 1859, did not bar the suit. *AMANAT ALI CHOWDHRY v. MUSEEN ALI* - - - - - ii Ap. 36

7. — *Suit for kabuliati.* In a previous suit the plaintiff sought to obtain a kabuliati from the defendant in respect of land held by him, alleging the quantity to be 8 bigas and 17 katas. It was therein determined that the defendant held only 7 bigas and no more. In the present suit brought to eject the defendant from 1 biga 17 katas of land, *held*, that it was not maintainable, as it was for the determination of a question decided in the former suit. *GOPAL CHANDRA ROY v. NABIN CHANDRA BHANDARI* - - - - - iii Ap. 34

8. — *Suit against surety of defaulting tenant.* A landlord sued his tenants and his tenant's surety in the Collector's Court for arrears of rent, the surety being merely treated as a nominal party, and the decree being given against the tenants. He afterwards sued the surety in the Civil Court on the bond given by him, and in the lower Court obtained a decree, not only for the arrears of rent, but also for the costs in the Act X suit. *Held* in special appeal, that the suit was, as regards the arrears of rent, not barred by s. 2, Act VIII of 1859, but that the costs in the Collector's Court could not be recovered. *RAMTANU ACHARJI v. KOMAL LOCHAN ROY* - - - - - iii Ap. 37

9. — *Civil Procedure Code, s. 2—Suit for declaration of title—Order of Collector under Act X of 1859, s. 23.* In a suit for declaration of title to land from which a ryot has been ejected at the suit of his zemindar by the order of a Collector under s. 23, Act X of 1859, and wherein the genuineness of the pottah upon which the suit is brought is at issue, the order of the Collector cannot be pleaded in bar. *BHAIRU SINGH v. UDIKARAN SINGH* - - - - - iii Ap. 139

10. — *Proceedings under s. 27, Act X of 1859.* Two purchasers of holdings in the defendant's zemindari at a sale for arrears of revenue applied to the Collector to have the transfer registered in the zemindar's sherista, under Act X of 1859, s. 27. Their application was refused; and then they brought a suit in the Civil Court to set aside the Collector's order and register their names. *Held*, that proceedings authorized to be taken in the Collector's Court under s. 27, Act X of 1859, are not proceedings in a suit; and consequently that such proceedings are no bar to a suit in the Civil

RES-JUDICATA—continued.

Court under s. 2, Act VIII of 1819. *CHANDRA NARAYAN GHOSE v. KASINATH ROY CHOWDHRY* - - - - - iv F. B. 43

11. — *Suit to set aside sale in execution of decree.* In execution of a decree, the right, title, and interest of *A.* in a certain property were sold and purchased by *B.* In execution of another decree, the right, title, and interest of *A.* and *C.* in the same property were sold and purchased by *D.* In a suit by *A.* the sale to *B.* was set aside, but on appeal the decision of the Court of first instance was, upon consent of the parties, set aside and the sale allowed to stand good. *D.* sued for possession of the share of *A.* and *C.* in the property purchased by him, and obtained a decree for possession of the share of *C.* only. *D.* now sued to set aside the sale to *B.* and for possession of the share of *A.* *Held*, that the suit was not barred by s. 2, Act VIII of 1859. *CHATNA LAL SAHU v. MANU LAL* - - - - - v 220

12. — *Suit for share of estate of Mahomedan—Lien for dower.* A Mahomedan died, leaving among others a widow and a sister entitled to shares in his estate. The widow got possession of the whole. The sister died; and after her death her husband, on behalf of himself and grandson, sued the widow to obtain the shares to which the deceased sister was entitled, and obtained a decree for payment of the same, after satisfaction of the widow's lien for dower, in certain proportions to himself and grandson. The husband's interest in the decree was subsequently confiscated by Government for having taken part with the enemy in the Mutiny. He subsequently died leaving his grandson. The widow died during the Mutiny, and her brother was put into possession of the property by the Government as her heir. The grandson now sued the widow's brother to recover his own and his grandfather's share, alleging that the lien for dower had been satisfied. *Held*, the suit was not barred by Act VIII of 1859, s. 2. *MAHOMED AMEENODDEN KHAN v. MOZUFFER HOSSEIN KHAN* - - - - - v P. C. 570

13. — *Remand—Dismissal of suit for default in appearance of parties.* When a suit has been remanded by the Appellate Court and then dismissed by the Court of first instance for non-appearance of the parties, the plaintiff is not debarred thereby from bringing another suit upon the same cause of action against the same defendant. *RAGHUNATH SINGH v. RAM KUMAR MANDAL* - - - - - v Ap. 64

14. — *Suit against Municipal Commissioners for possession of land.* Previous to the institution of the present suit, one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro forma* defendants in the suit. This suit was dismissed as barred by the law of limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land on the allegation that his tenant had relinquished

RES-JUDICATA—continued.

the land within three months, in consequence of his having been dispossessed by the Municipal Commissioners. *Held*, that the suit was not barred by s. 2, Act VIII of 1859. PRICE v. KHILAT CHANDRA GHOSE - - v Ap. 50

15. — *Estoppel by judgment.*] The doctrine laid down in the *Duchess of Kingston's* case as to estoppel by judgment, is applicable to cases tried under Act VIII of 1859, the 2nd section of which is consistent with that rule. But the Judicial Committee, reversing the decision of the Court below, considered that the doctrine had no application in the present case, the judgment relied on not being the judgment of a Court of concurrent jurisdiction directly upon the point upon the same matter; and after an examination of the whole evidence restored the judgment of the first Court. KHUGOWLEE SING v. HOSSEIN BUX KHAN - - - vi P. C. 673

16. — *Will.*] S. died in 1865, leaving two sons, N. and G. M. took possession of the property of S. under a will alleged by her to have been executed by S. In 1867 G. brought his suit, as one of the heirs of S., to set aside the will, and made his brother N. a co-defendant. The Principal Sudder Ameen dismissed the suit, finding on the evidence that the will was genuine. In 1869 N. brought this suit for his share as heir of S. against M. The first Court found that the will was a forgery, and gave the plaintiff a decree. On appeal, the Judge held that N.'s claim was barred by the decision in the former suit brought by his brother, and reversed the decision of the first Court. *Held* on special appeal, that it was not barred by the finding of the Court in G.'s suit, as N. was no party to that suit, and he could not in any manner have availed himself of a decree in that suit to enforce a claim to his share. NABIN CHANDRA MAZUMDAR v. MUKTA SUNDARI DEBI - - - vii Ap. 38

17. — *Parties.*] *Held* on the facts, suit not barred by s. 2, Act VIII of 1859, not being between the same parties. UMES CHANDRA ROY v. NABIN CHANDRA MAZUMDAR, v 327 note

18. — *Civil Procedure Code, s. 2—Suit on joint bond.*] D. and B. executed a bond, by which they mortgaged certain lands as security for a loan taken by them from the plaintiffs. A suit was brought, and a decree was obtained by the plaintiffs against D. and B., under which they recovered a portion of the amount due on the bond. The plaintiffs now sued S. and others, on the ground that they were joint proprietors of the land mortgaged, that the loan was taken by D. and B. as managers for the use of all the parties interested, and for carrying on their joint business and trade, and that therefore they were all jointly liable. *Held*, that the suit could not be maintained. Ramnath Roy Chowdry v. Chunder Sekhur Mohapattar (4 W. R. 50) dissented from. NUTHOO LALL CHOWDHRY v. SHOUKEE LALL - - x 200

19. — *Suit for khas possession.*] The plaintiffs, as talookdars, brought a suit against their

RES-JUDICATA—continued.

tenant M. for recovery of rent at enhanced rates of land held by him, as to two cottahs of which he denied that they were part of his holding, but alleged that they were part of the lakhiraj holding of one H., and H. intervened in that suit and claimed the two cottahs as lakhiraj. The result of that suit was that the rent was assessed on the land admitted by M. to be in his possession, excluding the two cottahs. The plaintiffs then brought a suit against H. for a declaration that these two cottahs were their mal lands, and obtained a decree simply declaring their mal rights over the land in dispute. In a suit brought by the plaintiffs against H. after serving him with notice to quit, for recovery of khas possession of the two cottahs with meane profits, and praying that he might be ordered to remove a mud house erected by him on the land, the defence was that as the plaintiffs had already claimed khas possession and obtained a decree simply declaring their right to receive rent, the suit was barred, and that as H. had been twenty years in possession and had erected a house without any opposition from the plaintiffs, they had no right now to sue for khas possession. *Held*, that the suit was not barred by s. 2, Act VIII of 1859, and the plaintiffs were entitled to a decree for khas possession. ESHAN CHUNDER GHOSE v. HURRISH CHUNDER BANERJEE - - - x Ap. 6

20. — *Causes of action.*] Where a party, failing to obtain judgment for the possession of land claimed by her in her first suit *astatur*, brought a fresh suit claiming the land as property belonging to her talook according to the true boundary line,—*held*, affirming the decision of the High Court, that her suit was barred by s. 2 of Act VIII of 1859. WOOMATARA DEBIA v. UNNOPOORNA DASSEE - - xi P. C. 158
S. C. in the Court below, UMATARA DEBIA v. KRISHNA KAMINI DAS - - ii A. C. 102

21. — *Civil Procedure Code, s. 2—Enhancement of rent—Declaratory decree.*] Where, in a suit for enhancement of rent, the plaintiff failed to prove notice of enhancement, but the Court enquired into and gave a declaratory decree as to his right to enhance, such decree is decisive of the right in a subsequent suit for enhancement of the rent of the same tenure founded on a valid notice. NUFFEERCHUNDER PAUL CHOWDEY v. POULSON - - xii P. C. 53

22. — *Causes of action—Collateral issue.*] C., a Hindu subject to the Mitakshara law, adopted S., and afterwards B., and made a will, whereby, after providing for his widow, the family worship, &c., he made a division of his real and personal property between his two adopted sons. Provision was also made for forfeiture by either of the sons in case they disputed the will, in which event the whole estate was to go to the other son. This will was registered and filed in the Collector's Court. S. was subsequently disowned by C. and declared to have forfeited his right to anything under the will. In 1859, S. brought a suit against C., B., and certain

RES-JUDICATA—continued.

persons who claimed portions of the property under deeds executed by C., to cancel those deeds, to cancel the will, to set aside the adoption of B., and for maintenance. In this suit he alleged that C. had no power to make any of the devises of real estate contained in the will, inasmuch as the whole estate, consisting of property inherited by C. and property acquired by him from the income of such inherited property, was ancestral. The only issue raised in that suit referring to the will was whether it was assented to by S. The first Court found that it had been so assented to; that the adoption of B. was valid; and that S.'s conduct justified C. in disinheriting him: the suit was accordingly dismissed. S. appealed to the High Court, and in his grounds of appeal raised the same contention as before, viz., that the whole of the real property was ancestral, and therefore C. had no power to dispose of it without his consent. The High Court, in 1863, varied the decree of the first Court, and held that the will must be set aside so far as it affected the right of S. in the ancestral property, but that the ancestral property only included that inherited, and not that acquired by C. with the income of the inherited property. In a suit brought by S., after the death of B. and C., against B.'s widow and the parties to the former suit, or their representatives, to obtain possession of the whole estate of C. on the ground that both the inherited property and the property acquired from the income thereof were ancestral,—*held* (reversing the decision of the High Court), that, although the issue as to the assent of S. to the will clearly embraced only a portion of the controversy between the parties, the Court had jurisdiction, and indeed was bound, to decide whether or not the will was operative as to all or to any, and what portion of the property, and that its decision on that point was binding on the parties. According to the general law relating to *res-judicata*, where a question has been necessarily decided in effect, though not in express terms, between parties to a suit, they cannot raise the same question as between themselves in any other suit in any other form. S. 2, Act VIII of 1859, does not prevent the operation of this general law. The words "cause of action" in that section must be construed in reference to the substance rather than the form of the action. SOORJOMONEE DAYEE v. SEDDANUND MOHAPATTEE - - - xii P. C. 304

23. — *Means profits, suit for.*] Where a plaint prayed for possession and wasilat, and a decree was given for possession without mention of the wasilat, and on application for review it was urged, though not in the written grounds of application, that the question of wasilat ought to have been disposed of, but no decision was given as to it either by the High Court, or by the Court of first instance, to which application was afterwards made: *Held*, that the fact that a prayer for wasilat was contained in the plaint in the suit in which only a

RES-JUDICATA—continued.

decree for a possession was given was not a bar to a subsequent suit for means profits within s. 2, Act VIII of 1859. GAURI BAIJNATH PRASAD v. BUDHU SING - - - ii S. N. xvi

24. — *Decision of Revenue Court—Title—Collateral issue.*] The trial and determination by the Revenue Court of the amount of rent which the plaintiff is entitled to under a mokurari potta, in which the genuineness of the potta only comes collaterally in issue in determining the amount of rent, is not a bar to a subsequent suit in the Civil Court to try the validity of the potta. JANKESWAR DAS v. GULZARI LAL - - - v 666 note

TEKAITNE GOWRA KUMARI v. THE BENGAL COAL COMPANY - - - v 667 note

25. — *Landlord and tenant—Sale for arrears of rent—Deposit to protect under-tenure—Set-off—Voluntary payment.*] L. and R., the holders of a patni estate, granted in 1856 a darpatni lease to S. at an annual rent, the lease stipulating that S. should have full power of sale and gift, but should not sublet without the patnidar's consent. The lease contained no stipulation for the registration of any vendee or donee. In 1860 S. sold the darpatni lease to K., the deed of sale, which was duly registered, providing for mutation of names in the patnidar's books. No such mutation was ever effected by K., who was never recognized as their tenant by L. and R., the rent of the darpatni being paid in the name of S. In 1864, the rent due from the patnidars being in arrear, the zemindar proceeded to sell the patni under Reg. VIII of 1819. Thereupon K., in order to protect his under-tenure, deposited in the Collectorate on 17th November, 1864, a sum of money, on which the sale was stayed. K., being then in arrear in the payment of his darpatni rent, claimed to set off the amount deposited in the Collectorate against the rent due to L. and R. This L. and R. refused to allow, and they brought a suit in the Collector's Court against S. and his sureties to recover the arrears of rent. In that suit K. intervened, claiming the benefit of the set-off, to which, however, the High Court, on 26th June, 1866, on appeal, held, that he was not entitled, the deposit being merely a voluntary payment by K. On 30th October, 1867, K. brought a regular suit against S. and L. and R. to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal and the suit dismissed for want of jurisdiction. On 6th June, 1869, K. filed his plaint in the proper Court. *Held*, that he was entitled to recover the amount deposited by him in the Collectorate, and that the suit was not barred as being *res-judicata*, by the decision of 26th June, 1866. LUCKINARAIN MITTER v. KHETTRO PAL SINGH ROY - - - - - xiii P. C. 146

26. — *Dismissal of suit for multifariousness.*] The dismissal of a suit for multifariousness is not a hearing and determination of the suit within the meaning of s. 2, Act

RES-JUDICATA—continued.

VIII of 1859. FATEH SINGH v. LACHMI KOOR - - - - - xiii Ap. 37

27. — *Foreclosure in the Central Provinces—Suit for redemption.*] By a bond dated 10th February, 1857, a certain village was mortgaged by one G. to the appellants and their father as security for a loan; the bond providing that "if I fail to pay the money as stipulated, I and my heirs shall, without objection, cause the settlement of the said village to be made with you." The interest of G. in the village was described as that of a *malguzar*, and his proprietary right therein was declared by the Revenue Authorities shortly after the execution of the mortgage; but his payments of revenue being in arrear, the Board of Revenue granted a lease of the village for ten years to the appellants' father. The mortgagees in a suit on the bond obtained the following decree on 3rd November, 1860:—"As the defendant acknowledges the plaintiffs' claim, it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property." In proceedings in the Civil Court taken under this decree, the mortgagees asked for possession of the village, and obtained, on 17th July, 1862, an order, in pursuance of which they were put in possession, an appeal by G. being rejected. G. took various steps to recover possession of the mortgaged property, or a declaration of his proprietary interest therein, but failed in his endeavours; an application for a grant of the proprietary right in the village, and an appeal from an order cancelling his potta, being rejected by the Revenue Authorities on 8th December, 1864, and 27th July, 1865, respectively; and on 12th August, 1867 G. conveyed the village by deed of sale to the respondents. In a suit brought by them to redeem the mortgage and obtain possession of the property,—*held*, the suit was not barred by the order of the Civil Court of 17th July, 1862, nor had the orders of the revenue officers of 8th December, 1864, and 27th July, 1865, effected such a transfer of any right which G. might have had to the appellants as to render the sale to the respondents invalid. GOKULDASS v. KRIPARAM - - - - - xiii P.C. 205

28. — *Decision by Deputy Collector—Jurisdiction of the Revenue Courts.*] A, a ryot, brought a suit in the Court of the Deputy Collector against B, his zemindar, for recovery of possession of a piece of land, on the ground that he was the holder of a *maurasi potta*, and that he had been illegally ejected by B. The Deputy Collector held that the *maurasi potta* was genuine, and that B. had illegally ejected A. He passed a decree in favor of A. in execution of which A. obtained possession of the land in dispute. In a suit brought by B. against the heirs of A. in the Civil Court, for recovery of possession of the said piece of land, on the ground that the *maurasi potta* was a spurious document, and that no *maurasi potta* had been granted to A.,—*held* (JACKSON, J., doubting), that the decision of the Deputy Collector was

RES-JUDICATA—continued.

not conclusive between the parties. CHUNDER COOMAR MUNDUL v. NUNNEE KHANUM,

[xi F. B. 434
Contra HURO LALL SAHA v. TIRTHANUND THAKOOR - - - - - xi 437 note

29. — *Beng. Act VIII of 1869—Suit for rent—Jurisdiction of Civil Court.*] The decision of the Civil Court in a suit for rent under Beng. Act VIII of 1869, is binding in a suit between the same parties for a declaration that the land, the rent of which was the subject of the former suit, is *lakhiraj*. MOHIMA CHUNDER MOZOOMDAR v. ASRADHA DASSIA,

[xv 251 note

30. — *Suit for rent—Act X of 1859—Beng. Act VIII of 1869—Jurisdiction of Collector.*] *Held* (JACKSON, J., dissenting), that a judgment by a Collector, in a suit under Act X of 1859, declaring the plaintiff entitled to assess rent upon land alleged by the defendant to be *lakhiraj*, is not conclusive in a subsequent suit between the same parties for arrears of rent under Beng. Act VIII of 1869. *Per* JACKSON, J.—A decision in a previous and similar suit upon an issue raised substantially in the same manner by parties in a Revenue Court is binding upon them as evidence in a subsequent suit, which, but for the passing of Beng. Act VIII of 1869, would also have been brought in a Revenue Court. HURRI SUNKUR MOOKERJEE v. MUKTARAM PATRO - xv F. B. 238

31. — *Suit for Rent—Jurisdiction of Collector.*] The decision of the Collector in a suit for rent of certain land is conclusive, in a subsequent suit between the same parties in a Civil Court for a declaration that the land is liable to pay rent. MOHESH CHUNDER BUNDOPADHYA v. JOYKISHEN MOOKERJEE, xv 248 note

32. — *In a suit for rent under Act X of 1859, the Collector has no jurisdiction to decide a question of mukurari title otherwise than so far as it may be incidental to the determination of the amount of rent, if any, due; and his decision on such a question is therefore not binding in a subsequent suit to establish the mukurari right.* MEER BABUR ALI v. SHAIKH DOWLAT ALI - - - - - xv 242

33. — *Continuing contract—Damages.*] A., on the 1st of February, 1868, entered into a contract with B. to supply him with straw for twelve months, the supplies to be sent as ordered daily. On the 12th of March B. brought an action in the Small Cause Court against A. for damages sustained by the plaintiff by reason of A.'s having failed to supply straw as agreed upon. The Judge decided the questions in issue (namely, of the *factum* of the contract and the authority of the person who executed it in A.'s behalf) in favour of B., and gave him a decree. On the 21st of April, a second suit was brought by B. against A. on the same contract. The claim was for damages sustained by the plaintiff by reason of A.'s having failed to supply straw as agreed from the 20th of February to the 17th April. That

RES-JUDICATA—continued.

suit was dismissed, the Judge holding that the matter was *res-adjudicata*, as he considered that the contract was an entire one, and that *B.* had shown by suing on it for general damages, that he treated it as such, and had elected to rescind it. On the 9th of May a *rule nisi* was granted for a new trial, and on the 16th of May the rule was made absolute. On the 12th June, at the new trial, a decree was made in favour of *B.* for so much of the damages claimed as had been sustained subsequently to the date of the decree of the 25th March. In an action brought by *B.* on the same contract for damages sustained between the 17th April and the 16th of June, by reason of *A.* having failed to supply straw according to the terms of the same contract, *A.* denied that there had been any such contract, and further pleaded that the matter of the contract, if there had been one, had already been adjudicated upon. On a reference from the Small Cause Court, *held*, that the finding of the Judge upon the contract in the action brought on the 12th of March was conclusive between the parties, and that *A.*'s plea of *res-adjudicata* was not well founded. *COOK v. JADUB CHANDRA NANDI* - - - - - ii O.C. 48

34. — *Proceedings between same parties in another suit.* *B.* had instituted a suit in the Court of the Munsif of the 24-Parganas against *A.* on account of an alleged trespass to a certain drain, which *B.* then alleged to be his property; that suit was dismissed on the ground that *B.* had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by *A.* against *B.* in which *A.* stated it was his property, the judgment of the Munsif in the former suit was tendered in evidence on behalf of the plaintiff, and it was contended it was an estoppel. The Court admitted it in evidence, but doubted whether it would be an estoppel. *MAHOMED SHAHABOODEEN v. WEDGEBERRY*, [x Ap. 81]

35. — *Benami—Decision in former suit.* In execution of a decree of the Revenue Court in a suit brought by *K.* for arrears of rent of a certain patni, the patni was put up for sale and purchased in the name of *G.* The rent having again fallen into arrear, *K.* took proceedings against *G.* under Reg. VIII of 1819 for the sale of the patni, but the arrears having been paid the patni was not sold. In a suit for arrears of rent of the same patni subsequently brought by *K.* against *G.*, *P.*, and *B.* (the wife of *P.*) jointly, on the allegation that the patni had been purchased by *G.* benami for *P.* and *B.*, —*held*, that the suit was not barred by the former proceedings instituted by *K.* against *G.* under Reg. VIII of 1819. *PRASONNO COOMAR PAL CHOWDREY v. KOYLASH CHUNDER PAL CHOWDREY* - - - - - Sup. Vol. 759

36. — *Reversioners, suit by—Alienation by life-tenant—Adverse possession.* A daughter succeeded to a share of her father's estate, and transferred it in full pro-

RES-JUDICATA—continued.

perty by a formal instrument or *ikrarnama*, dated March, 1849, to her grand-daughter, expressly naming her and treating her as her heiress.—the transfer being in the nature of a release, reserving maintenance and other advantages to the donor. Upon the application of the grand-daughter before the Collector for the mutation of names according to the terms of the *ikrarnama*, the reversioners (collateral heirs of the father) affected to contest the unauthorized nature of the alienation, but dropped their opposition. In 1857 the diaras, or alluvial lands attached to the estate, were perpetually settled with the grand-daughter. The alienor quarrelled with her grand-daughter, and in 1857 brought a suit against her to set aside the *ikrarnama*, upon the ground of the non-performance of a condition subsequent. The plaintiff succeeded in the first Court, but the judgment was reversed (October, 1858) on appeal to the Zilla Judge. Pending the appeal the plaintiff died (February, 1858), and the reversioners applied to be, and were, admitted as her heirs, to conduct the appeal. The grand-daughter remained in possession from the date of transfer until 1866, when she died. In April, 1867, the present suit was brought by the surviving reversioner, who claimed to be entitled to recover possession of the property by right of inheritance from the alienor's father. He was one of the reversioners who had been admitted to conduct the appeal in the former suit upon the death of the alienor. *Held* (on special appeal and review), there had been no adverse possession; the instrument enured as a transfer of the donor's life-interest only; the judgment in the former suit brought to set it aside did not bind or affect the reversioners, who in that suit merely represented the interest of their predecessor, the life-tenant. *RAJ KUNWAR v. INDURJIT KUNWAR* v 585

37. — *Act XX of 1866, s. 53—Suit on mortgage bond.* A proceeding under s. 53 of Act XX of 1866 is a suit of a civil nature within the meaning of s. 1, Act VIII of 1859, independently of any peculiarities in the special procedure to be adopted. Therefore where a creditor has resorted to the summary procedure provided by s. 53, and has recovered a portion of his claim in execution of the decree so obtained, a regular suit subsequently brought to enforce his remedies on the bond, giving the defendant credit for the amount already recovered, is barred by s. 2, Act VIII of 1859. *EMAM MONTAZOODEEN MAHOMED v. RAJ-COOMAR DOSS* - - - - - xiv F. B. 403

But see *Utshub Narayan Chowdhry v. Chittra Raka Gupta* (viii Ap. 92), where it was held that a regular suit will lie for a declaration that property mortgaged by a bond on which a simple money-decree had been obtained by the mortgagee under the provisions of Act XX of 1866, continues liable for the decree though in the hands of a third person.

RESPONDENTS IN SAME INTEREST.

See PRIVY COUNCIL, PRACTICE OF.

RESTITUTION OF CONJUGAL RIGHTS—*Form of decrees*—Act VIII of 1859, s. 200.] *Per MARKBY, J.*—In a suit by a husband for restitution of conjugal rights, a decree that "the case be decreed awarding the plaintiff to take defendant as his married wife," is not a proper form of decree. The decree may order the wife to return to her husband's protection, but such a decree is not one which can be enforced in the manner provided by s. 200, Act VIII of 1859, as being an order "for the performance of a particular act." *GATHA RAM MISTREE v. MOOHITA KOCHIN ATTEAH DOMOONER* - - - xiv 298

RESUMPTION.

See GHATWALI TENURES.
ONUS PROBANDI
SETTLEMENT.

2. — *Reg. II of 1819, s. 30—Lakhiraj—Limitation—Reg. XIX of 1793, s. 10.*] A suit for resumption under s. 30, Reg. II of 1819, must be assumed to refer only to lakhiraj created prior to the first of December, 1790, and therefore is not exempt from limitation under s. 10, Reg. XIX of 1793. *HEERA MONEE DABEE v. KOONJ BEHARY HOLDAR* Sup. Vol. Ap. 8

3. — *Suit for—Reg. XIX of 1793, s. 10—Reg. II of 1819, s. 30.*] Reg. II of 1819, s. 30, does not apply to a suit in a Civil Court for resumption under s. 10 of Reg. XIX of 1793. The decisions in *Sonatus Ghose v. Abdool Farar* and *Heera Monee Dabee v. Koonj Behary Holdar* upheld. *HARIHAR MUKHOPADHAYA v. MADAB CHANDRA BABU; NABA KRISHNA MOOKERJEE v. KAILAS CHANDRA BHUTTA-CHABJEE* - - - - - viii P. C. 566
SONATUN GHOSE v. ABDOL FARAR,
[Sup. Vol. 109]

4. — *Jaghir—Purchases before resumption.*] Where the evidence showed that certain arms and stores seized had been purchased by the jaghirdar before the resumption, and there was no authority or evidence to show that those who held by jaidad were not entitled to things so purchased,—*held*, that the representatives of the jaghirdar were entitled to recover the value of the arms and stores so seized. *FORESTER v. THE SECRETARY OF STATE* xii P. C. 120

5. — *Jaghir—Alienation by grantee.*] A semindar cannot sue to resume a jaghir on the ground of its alienation by the grantee, so long as there are heirs male of the grantee existent. *RAMESWAR NATH SING v. HARALAL SING*,
[i A. C. 170]

6. — *Lakhiraj tenure—Settlement of invalid lakhiraj—Effect of resumption and settlement of lakhiraj on the holder of a mukurari lease from the lakhirajdar.*] Assessment of revenue by Government on invalid lakhiraj land after resumption does not confer a new estate on the lakhirajdar, and does not cancel or extinguish a mukurari lease granted by the lakhirajdar previous to the settlement, and during the time he was in possession of the land as lakhiraj. *PRATAB NARAYAN MOOKERJEE v. MADHU SUDAN MOOKERJEE*,
[viii 197]

RESUMPTION—continued.

7. — *Assessment of lakhiraj tenures—Under-tenants, rights of.*] The mere resumption of a lakhiraj tenure by Government does not dissolve the contract between the semindar and tenant. The tenant has the option to determine his tenancy, or he may consent that the amount of revenue which the landlord must pay to Government, or a portion of it, shall be added to his original jumma. *FARZARA BANU v. AZIZUNNISA BIBI* - - - Sup. Vol. 175

RESUMPTION OF FERRY, SUIT FOR COMPENSATION FOR LOSS BY.

See JURISDICTION OF CIVIL COURT.

RESUMPTION OF INVALID LAKHIRAJ.

See LANDLORD AND TENANT.

RESUMPTION OF JAGHIR BY EAST INDIA COMPANY.

See ACT OF STATE.

RESUMPTION OF RENT-FREE TENURE.

See JURISDICTION OF CIVIL COURT.

GRANT OF LAND RENT-FREE BY ZEMINDAR.

LIMITATION ACT X OF 1859, s. 28.

REVENUE AS DISTINGUISHED FROM RENT.

See GRANT OF LAND RENT-FREE BY ZEMINDAR.

REVENUE COURT, SUIT TO SET ASIDE ORDERS OF.

See JURISDICTION OF CIVIL COURT.

REVENUE, PAYMENT OF ARREARS OF, BY ONE CO-SHARER.

See CO-SHARERS.

REVERSIONERS.

See DECLARATORY DECREE, SUIT FOR. HINDU LAW, ALIENATION.

HINDU LAW, REVERSIONERS.

LIMITATION ACT XIV OF 1859,

s. 1, CL. 12.

RES-JUDICATA.

REVIEW—*Suit in formâ pauperis—Court of original jurisdiction.*] A Court of original jurisdiction has power to entertain an application to review an order refusing a petition for leave to sue in formâ pauperis. IN THE MATTER OF THE PETITION OF UMASUNDARI DEBI - - - - - v Ap. 29

2. — *Registration Act (VIII of 1871), s. 73—Power of District Judge.*] A District Judge has no power to review an order passed under s. 73, Act VIII of 1871. IN THE MATTER OF THE PETITION OF HADJEE ABDULLA - x 394
Reversed by Privy Council on appeal, *see REASUT HOSSEIN v. HOSSEIN ABDULLAH*.
[i L. R. 2 Cal. 121]

3. — *Small Cause Court, Mofussil—Power of Judge—Procedure—Act XI of 1865, s. 21.*] The Judge of a Small Cause Court in the mofussil cannot review his judgment, except as provided by s. 21 of Act XI of 1865. IN THE MATTER OF THE PETITION OF TADIE HOSSEIN KHONDAR - - - - - vi 383

4. — Where one of the provisions of a 21, Act XI of 1865, is not complied with, e.g., where no notice of an intention to apply at the next

REVIEW—continued.

***Mitting of the Court for a new trial is given, an application for review of judgment of a Small Cause Court cannot be entertained. IN RE PITAMBAR SADHU KHAN** - vi 390 note

5. — *Act VIII of 1859, ss. 376 & 378—Order refusing to admit a special appeal, power of High Court to grant a review of—Notice of application for review.* An order refusing to admit a special appeal is open to review, and the application for review may be made without notice to the other side. **JOY KOOMAR DUTTA JHA v. ESHAREE NUND DUTTA JHA.** [x 155]

See In re Barmutollah (x 156 note), where, however, under the circumstances, the Court refused the application.

6. — *Act VIII of 1859, ss. 376, 377, 378, and 380—Order rejecting review.* An order rejecting a review is not conclusive, and the Court may, in the exercise of its discretion, admit a review even after a prior order rejecting it. **SETON-KARR, J., differed. NASIR-UDDIN KHAN v. INDRONARAYAN CHOWDHRY.** [Sup. Vol. 367]

7. — *Appeal—Act VIII of 1859, ss 376 and 376.]* A Judge is bound to proceed with an application for a review of his judgment even though a petition of appeal has been filed subsequently to the application for review. **BHARAT CHANDRA MAZUMDAR v. RAMGUNGA SEN** - - - - - Sup. Vol. 362

8. — *Act VIII of 1859, s. 376—Fresh evidence—Proof of alleged ground of review.* A review of judgment under s. 376 of Act VIII of 1859, on the ground of discovery of new evidence not within the applicant's knowledge at the hearing of the case, should not be admitted without proof of the truth of the ground alleged. **UMRAO THAKUR v. GAKUL MANDAL** - - - - - viii Ap. 34

NOLITA MOHAN ROY CHOWDHRY v. DENO-NATH MOOKERJEE - - - - - xi 427 note

KHELUT CHUNDER GHOSE v. PRANKISTO GHOSE - - - - - xi 428 note

NAFFAR CHAND PAL CHOWDHRY v. SANDES, [viii Ap. 35 note]

RAMDHAN CHUCKERBUTTY v. JAINARAYAN PANJA - - - - - viii Ap. 36 note

SITANATH GHOSE v. SHAMASUNDARI DASI, [viii Ap. 37 note]

NUDARCHAND BHOOTY v. REEDDY MUNDUL, [xi 424 note]

9. — *Act VIII of 1859, s. 376—Judgment passed on special appeal—Ground for review.* On an application for review of a judgment, passed by the High Court in a special appeal, confirming the decision of the lower Appellate Court, on the ground of discovery of new evidence,—*held*, this might be a good ground for moving the lower Appellate Court for a review of its judgment, but was not a sufficient ground for asking for a review of a judgment passed in special appeal. **PANCHANAN MOOKERJEE v. RADHA NATH MOOKERJEE** - iv A. C. 213

REVIEW—continued.

10. — *Ground for review—Omission to try material issue—Fresh evidence—Act VIII of 1859, s. 376.]* The omission of a Court to take into consideration a material issue is a sufficient ground to admit an application for review of judgment. When an application for review is admitted upon other grounds, fresh evidence not produced at the trial may be received, although no reason, as required by s. 376, Act VIII of 1859, had been assigned for the non-production at the trial. **BIHARI LAL NANDI v. TRILAKHOMAYI BARMANI** - iii A. C. 346

11. — *Admission of review by lower appellate Court after dismissal of special appeal—24 & 25 Vict., c. 104, s. 15.]* Upon the dismissal of a special appeal by the High Court, the appellant in special appeal applied to the High Court for a review of judgment upon the ground of discovery of fresh evidence. This application was rejected, on the ground that the Court could not take cognizance of the merits of a case in special appeal, and therefore could not admit a review upon fresh evidence. The special appellant then applied to the lower Appellate Court for a review of its judgment on the ground of discovery of fresh evidence. This application was admitted, and a review of the judgment was allowed. On application to the High Court under s. 15 of the Charter Act,—*held*, the lower Appellate Court had no jurisdiction to admit the application for review. **IN THE MATTER OF THE PETITION OF JADUNATH MOOKERJEE** - - - - - vi 333

See also IN RE GUNGA BISHEN SAHU, [vi 334 note]

12. — *Act VIII of 1859, s. 376—Arguments and grounds to be raised on review.]* It cannot be treated as a universal rule that no point can be raised on an application for a review which has been already discussed and decided on the original hearing of the appeal; or that no new point which has not been raised on the hearing of the appeal can be argued on the application for a review. In each case the Court to which the application is made must consider and decide whether a review is necessary to correct any evident error or omission, or is otherwise requisite for the ends of justice. **IN THE MATTER OF THE PETITION OF CHINTAMANI PAL; CHINTAMANI PAL v. PYARI MOHUN MOOKERJEE; IN THE MATTER OF THE PETITION OF SALEH SHABI SABI-UD-DIN ABU SALEH; SALEH SHABI SABI-UD-DIN ABU SALEH v. ASADUNISSA BIBEE.** [vi F. B. 126]

13. — On application for review of judgment,—*held*, a party applying for the review of judgment must show that there is good and sufficient cause for granting the review before he can be heard to argue that the decision is erroneous. In so showing cause, (first) no point can be raised which has been already discussed and decided on the original hearing of the appeal; and (secondly) no new point which has not been raised at the hearing of the appeal can be argued on the

REVIEW—continued.

application for review. BHAWARAL SINGH v. RAJENDRA PRATAP SAHOY - - - v 331

JANAB ALI v. CHANDI CHARAN DEY, [v 334 note

GUNGAPERSAD v. AGRA & MASTERMAN'S BANK - - - - - v 340 note

HAZRA BEGUM v. KHAJA HOSSEIN ALI KHAN, [v 341 note

COLLECTOR OF TIPPERAH v. MAFZUNNISSA BIBI - - - - - v 341 note

GARIB HOSSEIN CHOWDHRY v. WIFE, [v 342 note

BENI MADHAB GHOSE v. GANGA GABIND MANDAL - - - - - v 345 note

14. — *Issue not noticed in the lower Court—Arguments in appeal and review.*] In the first Court an issue was raised whether or no the hearing of this suit was barred by the law of limitation. One of the grounds of appeal to the Judge was, that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector's settlement. The Judge did not notice this ground in his judgment. The same ground of appeal was repeated in the special appeal to the High Court, but that Court refused to entertain it for the reason that it did not appear to have been raised in argument before the Judge or in the first Court. On application for review, it was urged that the Court ought to have listened to this ground, but the Court adhered to its former decision. Counsel should not be heard to re-argue a case on review upon the same points as were argued in special appeal. RAJ KUNWAR v. INDJEET KUNWAR, [v 585

15. — *Issue not raised in lower Courts.*] In an application for review after special appeal, the Court will not entertain a question not raised before at a former stage of the suit. IN RE TUFANI SINGH - - - - - vi Ap. 141

16. — *Act VIII of 1859, ss. 376 to 378—Appeal—"Final."*] Where a Subordinate Judge, after deciding a regular appeal, granted an application for review of judgment on the ground that new evidence had been discovered, but without any enquiry or proof that such evidence was not within the knowledge of the applicant, or could not have been adduced by him at the time the decree was passed.—*held*, that this was an error or defect in the procedure or investigation of the case which affected the decision, and was a ground of appeal when the decision upon review was brought before the High Court on special appeal. The word "final" in s. 378 of Act VIII of 1859 means that the order rejecting the application or granting the review shall not by itself be open to appeal. BHIRUB CHUNDER SURMAH CHOWDHRY v. MADHURAM SURMAH - - - - - xi F. B. 423

17. — *Application for, after ninety days—Just and reasonable cause—Act VIII of 1859, ss. 363, 377, and 378—Appeal—Full Bench Rulings.*] The decision of a subordi-

REVIEW—continued.

nate Court as to what constitutes "just and reasonable cause" for admitting a review after the prescribed period is appealable. The words in s. 378, Act VIII of 1859, "its order in either case, whether for rejecting the application or granting the review, shall be final," are applicable only to the order for rejecting the application or granting the review, and not to the decision as to whether there was just and reasonable cause for allowing the application to be made after the period of ninety days prescribed by s. 377 had elapsed. A new exposition of the law by a Full Bench after the passing of the original decree is not "just and reasonable cause" for admitting a review after the prescribed period. When a review has been granted, the Court is bound to decide the case according to any new exposition of the law by a Full Bench made since the original decision. SHAMA CHURN CHUCKERBUTTY v. BINDABUN CHUNDER ROY - - - Sup. Vol. 892

18. — *Act VIII of 1859, s. 377.*] Where a party applying for a review of judgment after the expiry of the period of ninety days allowed by s. 377, Act VIII of 1859, had not, as required by that section, shown any just and reasonable cause for not preferring his application within the prescribed period, the order admitting the review was held to have been improperly granted, and was set aside with all subsequent proceedings thereon. LUCHMUN SING v. TIRBANI BUKSH, xiv P. C. 373

19. — *Admission after ninety days—Just and reasonable ground for delay.*] A Court has no jurisdiction to entertain an application for review after the lapse of ninety days of the judgment to be reviewed, unless just and reasonable cause for the delay be given. SHAMA CHURN CHUCKERBUTTY v. BINDABUN CHUNDER ROY - - - - - Sup. Vol. 892

MAHOMED GAZI CHOWDHRY v. DULLAB BIBI, [v 318 note

20. — *Time for filing application for—Holiday—Act VIII of 1859, s. 377.*] When the ninety days within which an application for review of judgment may ordinarily be filed expire on a Sunday or holiday, or in the middle of a holiday extending over more than one day.—*held*, that the applicant has a right to file his petition for review on the first day on which the Court sits after the holiday. *Per* KEMP, J. (dissenting), that he has no such absolute right; that the admission of an application for review after the expiration of ninety days can only be allowed when a just and reasonable ground for delay has been shown to the satisfaction of the Court. NARAYAN MANDAL v. BENI MADHAB SIKAR, [iv F. B. 32

21. — An application for review of judgment of three out of five analogous cases decided by the High Court, the judgment in two of which had been reversed by the Privy Council, was made after a lapse of more than ninety days from the date of judgment. *Held*, that a lapse of ninety days, under the circum-

REVIEW—continued.

stances, would not be a bar to the granting of the review. *SATTO SARAN GHOSAL v. TARINI CHARAN GHOSE* - - - - - iii A. C. 287

22. — *Application for review after appeal by party who did not appeal—Act VIII of 1859, s. 377—Just and reasonable cause for delay in filing petition of review.* Upon the appeal of one of the defendants to the Privy Council, the judgment of the High Court was reversed. Another defendant, whose defence was the same as that of the defendant who had appealed, applied to the High Court to review its judgment after a lapse of several years from the date of the judgment of the High Court, but within three months from the date on which he became aware of the decision of the Privy Council. The application was refused. *Satto Saran Ghosal v. Tarini Charan Ghose* doubted. *PANCHANAN BOSE v. GURUDAS ROY* - - - - - ix 187

REVIEW, ADMISSION OF, AFTER TIME.

See SUPERINTENDENCE OF HIGH COURT.

REVIEW, APPLICATION FOR.

See APPEAL.

LIMITATION ACT XIV OF 1859, s. 20.

REVIEW IN CRIMINAL CASES—Judgment in Criminal appeal. The High Court cannot review its judgment passed in a criminal case before it on appeal. *QUEEN v. GODAI RAOUT.* [Sup. Vol. 436]

2. — *Order of Criminal Court—Order obtained on misstatement of facts—Forfeited property—Criminal Procedure Code (Act XXV of 1861), ss. 184, 185.* Where an order for the release of the property of an absconding offender, which had been attached under s. 184 of the Criminal Procedure Code, Act XXV of 1861, had been obtained from the High Court on an *ex parte* application, and on an incorrect statement of facts, the High Court, on the application of the Government, cancelled such order. *IN THE MATTER OF THE PETITION OF THE GOVERNMENT OF BENGAL* - ix 342

REVIEW, ORDER REJECTING.

See APPEAL TO PRIVY COUNCIL.
LETTERS PATENT, CL. 15.
SUPERINTENDENCE OF HIGH COURT.

REVISION.

See CRIMINAL PROCEDURE CODE (ACT X OF 1872), ss. 294-297.
NUISANCE.

2. — *Criminal Procedure Code (Act XXV of 1861), s. 435—Act X of 1872, s. 296.* *Per MARKBY, J.*—S. 435 (Act VIII of 1869) provides for the revision of proceedings which have already been commenced; s. 68 (Act XXV of 1861) provides for the institution of proceedings *de novo*. *IN THE MATTER OF THE PETITION OF RAMJAI MAZUMDAR* vi Ap. 67

REVISION—continued.

3. — *Criminal Procedure Code (Act XXV of 1861), s. 169.* A Court of Session has no power to interfere, under s. 435 of Act XXV of 1861, with an order of a Magistrate permitting a prosecution under s. 169 of Act XXV of 1861. *GOPAL MOZUMDAR v. HURO SUNDARI BAISTAMI,* [viii Ap. 20]

4. — *Power of High Court—Alteration of verdict and sentence—Acquittal.* The High Court has no power, either as a Court of appeal or as a Court of revision, to reverse, alter, or set aside a verdict of acquittal even if it be contrary to the evidence. *QUEEN v. BAZU,* [Sup. Vol. 750]

5. — *Conviction—Acquittal—Appeal.* The verdict of a jury cannot be reversed by a Court of revision, even if it be a verdict of "guilty." The only remedy for the prisoner in such a case is an appeal (which can only be on a question of law), or an application to the Executive Government. Nor can a verdict pronounced by a jury of "not guilty" be reversed by the High Court on revision, and it is clear that no appeal lies from such a verdict. *QUEEN v. GORACHAND GHOSE* - - - - - iii F. B. 1
But *see QUEEN v. BAIKANTHANATH BANERJEE* - - - - - iii F. B. 2 note

6. — *Powers of High Court—Verdict of jury—Acquittal—Misdirection by Judge.* The High Court, sitting as a Court of revision, cannot interfere to set aside a verdict of acquittal by a jury on the ground of misdirection by the Judge. *QUEEN v. CHANDRAKANT CHUCKERBUTTY* - - - - - i A. Cr. 8

7. — *Power of High Court—Criminal Procedure Code (Act XXV of 1861), s. 366—Examination of accused—Postponement of trial for summoning a witness—Discretion of Judge.* A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it as required by s. 205 of the Code of Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate and taking his evidence in the matter. *Held*, that it being wholly within the discretion of the Judge, under s. 366, to say whether or not he should postpone the trial, or summon any witness to give his evidence, the High Court, as a Court of revision, would not interfere or order a new trial. *QUEEN v. RADA JANA* - - - - - iii A. Cr. 59

8. — *Criminal Procedure Code (Act XXV of 1861), s. 404—Verdict of acquittal—Enhancement of punishment.* Under s. 404 of the Criminal Procedure Code the High Court may set aside a judgment of acquittal for error in law. The High Court, as a Court of revision, has power to enhance a punishment. The High Court may send the case back to the Court of Session with an order to pass the

REVISION—continued.

proper sentence. The High Court may act as a Court of revision after it has acted as a Court of appeal in order to correct an error which cannot be set right by appeal. *QUEEN v. GORACHAND GOPE* - - - Sup. Vol. 448

9. — *Penal Code (Act XLV of 1860), ss. 380, 456, 457—Conviction for separate offences—New trial.*] The prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal, the Sessions Judge, holding that the offence proved was under s. 457, ordered a new trial for offences under ss. 457 and 380. *Held*, that there ought not to be a new trial, but that the conviction and sentence under s. 380 should be set aside. *QUEEN v. RAMCHARAN KAIRI* Sup. Vol. 488

10. — *Power of High Court—Joint charge—Parties in riot on opposite sides.*] A Magistrate should not send up joint charges to the Sessions Court against persons who take part in a riot on opposite sides, as they have not a common object. But where a person had been so jointly charged, and rightly convicted by the Sessions Court, *held* (MACPHERSON, J., dissenting) that, as the prisoner had not been prejudiced by the mistake of the Magistrate, there was no sufficient ground for setting aside his conviction or ordering a new trial. *QUEEN v. BAZU* - - - Sup. Vol. 750

RIGHT OF OCCUPANCY.

See KABULIAT, SUIT FOR.

SALE FOR ARREARS OF RENT.

2. — *Land let for grazing cattle.*] *Reple.*—A right of occupancy can be gained in land let for the purposes of grazing cattle or horses. *FITZPATRICK v. WALLACE* - - - ii A. C. 317

3. — *Transferable tenure.*] A transfer of a mere right of occupancy gives no title to the transferee against the zemindar. *DURGA SUNDARI v. BRINDABUN CHUNDRA SIKKAR CHOWDEY* - - - ii Ap. 37

4. — *Receipt of rent by zemindar—Purchaser from tenant.*] A zemindar does not, by the mere receipt of rent from a purchaser from the tenant having a right of occupancy, sanction the sale to the purchaser so as to give him a right of occupancy. *GAUR LAL SIKKAR v. RAMESWAR BHUMIK* - - - vi Ap. 92

5. — *Zemindar and ryot—Transfer by ryot—Mesne profits.*] A right of occupancy, which is not transferable, is merely a right on the part of the person entitled to it to occupy and till the soil either by himself or by persons dependent on, or subordinate to him, *e.g.*, his servants, lessees, or licensees. Therefore, where a non-transferable right of occupancy was transferred, and the transferee was in actual possession of the soil, tilling and using it for his own benefit, — *held*, that the zemindar had a right of suit against the transferee to recover possession of the land. He was also entitled to recover as damages so much of the zemindar's rents and profits as the defendant had, while in possession, been the means of preventing

RIGHT OF OCCUPANCY—continued.

the zemindar from receiving. *SOHODWA v. SMITH* - - - xii 88

6. — *Transfer of tenure—Ejectment of transferee.*] Where a tenure has been transferred by the tenant, and it is found that the transfer was invalid, the zemindar is entitled to eject the transferee, and look to the former tenant for his rent. *SUDDYE PURIRA v. BOISTUB PURIRA* - - - xii 84 note

7. — *Transfer—Right of ejectment—Subtenant.*] A tenant having a right of occupancy does not determine it by subletting the land; therefore, where the lessees are ejected by the zemindar they are entitled to recover possession under the terms of their leases. *JAMIR GAZI v. GONSYE MUNDUL* - xiii 278 note

8. — A right of occupancy is not transferable irrespective of the consent or otherwise of the zemindar. *BUTI SINGH v. MURAT SINGH* - - - xiii 284 note

9. — If a ryot having a right of occupancy transfer his right to another, his right is not thereby forfeited, and the zemindar has no right to eject the transferee. *GORACHAND MUSTAFI v. MADAN MOHAN SIKDAR*, [xiii 279 note

10. — *Right of occupancy—Subletting—Act X of 1859, s. 6.*] A. sued for a declaration of right of occupancy founded on a potta and long possession, and alleged that he had underlet to ryots the land devised by the potta, but that B. had obtained a decree against them for rent. The lower Court, on appeal, held, that A. had determined his tenancy by quitting the land. *Held*, that A. did not, by subletting, transfer the right of occupancy. Decree reversed, and case remanded for trial on the merits. *HARAN CHANDRA PAL v. MUKTA SUNDARI CHOWDEHRAIN* - - - i A. C. 81

11. — *Leases for fixed terms—Act X of 1859, ss. 6 and 7.*] There is nothing in the mere fact of a tenant having been in possession for over twelve years under a series of pottas, each for a fixed term, which gives him a right of occupancy. *DAMANULLA SIKKAR v. MAMUDI NASHIO* - - - iii A. C. 178

12. — *Cultivating ryot—Act X of 1869, ss. 6 and 7—Beng. Act VIII of 1869, ss. 6 and 7.*] A ryot who has held or cultivated a piece of land continuously for more than twelve years, but under several written leases or pottas, each for a specific term of years, is entitled to claim a right of occupancy in that land, unless there is in the potta an express stipulation contrary thereto. *PANDIT SHEO PROKASH MISSEER v. RAM SAHOY SINGH* viii F. B. 165
KHAJURANNISSA BEGUM v. AHMED REZA, [viii 166 note

13. — *Beng. Act VIII of 1869, s. 6.*] A. and B. jointly obtained a potta of a piece of land from the zemindar for a period of five years. Afterwards A. alone obtained a potta for another period of five years. Upon the expiry of this period, A. held on for two years longer, when he was dispossessed by the zemindar.

RIGHT OF OCCUPANCY—continued.

dar. In a suit by A. for recovery of possession on the ground that he had acquired a right of occupancy,—*held*, that he had not acquired a right of occupancy. **MAHOMED CHAMAN v. RAMPRASAD BHAGAT** — — — viii 338

14. — *Act X of 1859, s. 6—Beng. Act VIII of 1869, s. 6—Cultivating ryot.* From 1824 to 1832 the defendant held certain lands as cultivator; from that year to 1839 he obtained a lease from the zemindar of the village in which the lands were situate; from 1839 to 1843 he continued to hold these lands as cultivator; from that time to 1862 he again obtained a lease of the village, retaining these lands in his own cultivation; and after the expiry of the lease he continued to cultivate the lands. In a suit by the zemindar for possession, on the ground that the defendant was holding over after the expiry of his lease,—*held*, that the defendant had acquired a right of occupying under s. 6, Act X of 1859. **MUKANDI LAL DUBEI v. CROWDY** — viii Ap. 95

15. — *Act X of 1859, s. 6—Ryot.* A holding for twelve years, whether wholly before or wholly after, or partly before and partly after, the passing of the Act, entitles a ryot to a right of occupancy under s. 6, Act X of 1859. **THAKOORANEE DOSSEE v. BISHESHUR MOOKERJEE** — — — Sup. Vol. 202

16. — *Act X of 1859, s. 6—Transferable tenure.* A tenure not originally transferable without the consent of the landlord does not become so merely because the tenant has obtained a right of occupancy under s. 6, Act X of 1859. *Quære per* PEACOCK, C.J.—Whether a right of occupancy gained under s. 6, Act X of 1859, is necessarily heritable? **AJOO-DHIA PERSAD v. EMAMBANDEE BEGUM**, [Sup. Vol. 725

17. — *Subletting tenure.* A right of occupancy under s. 6, Act X of 1859, may be acquired by a tenant of land sublet by a ryot; but not unless the ryot subletting has himself a right of occupancy. The acquiring the right is confined to the special cases in Act X of 1859. Where that Act is held not to apply, there is no equitable principle on which a person occupying under a grant for no specified period can acquire a right of occupancy. **RAMDHAN KHAN v. HARADHAN PARAMANICK**, [ix 107 note

18. — *Permissive possession.* During the plaintiff's absence on imprisonment and transportation, the defendant took possession of land which previously belonged to him as a tenant, and the landlord allowed the defendant to hold as his tenant. He held possession for more than twelve years. *Held*, under s. 6, Act X of 1859, the plaintiff acquired a right of occupancy against the landlord. **DOMUN v. SUDUNKOOLAH** — — — i S. N. xxv

19. — *Transfer of ryot's interest—Abandonment—Forfeiture—Beng. Act VIII of 1869, s. 6.* A mokurari maurasi potta was granted in 1838 to A., who was found to have held thereunder as a ryot till 1859, when his

RIGHT OF OCCUPANCY—continued.

right, title, and interest were sold in execution of a decree, and purchased by B., and the latter was accepted as tenant by, and paid rent to, the zemindar for nearly twelve years. The zemindari being sold in 1871 for arrears of Government revenue was purchased by the plaintiff, who gave B. notice to quit, and on his refusal brought the present suit to eject him. *Held*, that the right of occupancy which A. had acquired under s. 6 of Beng. Act VIII of 1869, at the time of the sale to B., was not transferable. *Held* further, that, by ceasing himself to hold or cultivate the land, it might be considered that A. had abandoned his right, or that the right had ceased. No right, therefore, remained in A. or his heirs such as would prevent the plaintiff from ejecting B. **NARENDRA NARAYAN ROY CHOWDHREY v. ISHAN CHANDRA SEN** — — — xiii F. B. 274

20. — *Transfer—Possession of transferor—Act X of 1859, s. 6.* The possession of the vendor cannot be added to the possession of the purchasers so as to give the latter a right of occupancy under s. 6, Act X of 1859. **HYDER BUKSH v. BHUBINDEO DEB COWAR**, xiii 276 note

TABAPRASAD ROY v. SURJOKANTO ACHARJEE CHOWDHREY — — — xiii 281 note

21. — *Act X of 1859, s. 6—Tank.* The provisions of Act X of 1859, with respect to acquiring a right of occupancy, do not apply to a tank which was not shown to form part of any grant of land, nor to be appurtenant to any land. **SIBU JELYA v. GOPAL CHANDRA CHOWDHREY** — — — xiii 423 note

22. — *Khodkast ryot—Abandonment of land.* The right of occupancy given in s. 6, Act X of 1859, is a right to occupy and hold the land. When a ryot leaves his home he ceases to be a khodkast ryot; and if he refuses to come back and cultivate the land when called upon, the zemindar is at liberty to settle the land with others. **HABO DASS v. GOBIND BHUTTACHARJEE** — — — iii Ap. 123

23. — *Nij jote land.* A cultivator of nij jote land may acquire a right of occupancy under s. 6, Act X of 1859, when it had not been let under a lease for a term of years, or year by year. **GAURHARI SINGH v. BEHARI RAUT**, [iii Ap. 138

RIGHT OF REPLY—Hearing of rule "nisi"—Practice. On the hearing of a rule nisi after cause had been shown against the rule, it was objected on Counsel rising to support it that there was no right of reply, no affidavit having been used in showing cause. The objection was overruled, and a reply allowed. **BAMASUNDARI DAS v. RAMNARAYAN MITTER**, [vii Ap. 69

2. — *Ground for special appeal.* Where an appeal was dismissed by the lower Appellate Court, after hearing the respondent's pleader, without giving the appellant's pleader an opportunity to reply, the High Court, on that objection being made a ground of special appeal from an order of the Judge refusing to

RIGHT OF REPLY—continued.

grant a review on that ground, set aside the order and sent the case back for re-trial. *JARDINE v. TABINI MOHAN SEN* - - viii Ap. 44

RIGHT OF SUIT.

See ACT IX OF 1847.

ACT X OF 1859, s. 24.

ATTORNEY AND CLIENT.

DAMAGES, SUIT FOR.

JURISDICTION OF CIVIL COURT.

RIGHT OF WAY.

See ACQUISITION.

ACT VI OF 1857.

INJUNCTION.

3. — *User.*] The finding that a right of way had been "formerly" exercised is not a sufficient finding to indicate the length of time for which the right had been exercised, and is therefore insufficient to prove a right of user. *KRISHNA CHANDRA CHUCKERBUTTY v. KRISHNA CHANDRA BANIK* - iii A. O. 211

8. — *Evidence—Particular route.*] In a suit for declaration of a right of way over the land of another, the plaintiff must prove the particular line over which he claims the right. Mere proof of a right to pass over the land without proving the particular route will not entitle a plaintiff to a decree. *RADHANATH SUGRACHARJI v. BAIDONATH SEAL KABIRAJ*, [iii Ap. 118]

4. — *User—Limitation.*] A right of way over the land of another must be kept up by constant use. After a discontinuance of such use for a period of six years, no suit can be brought to re-establish it. *HURIDAS NANDI v. JADUNATH DUTT* - - - v Ap. 66

RIGHT TO APPEAR.

See ADVOCATE.

PLEADER.

RIGHT TO BEGIN—Counsel—Practice—Reference to High Court under s. 434, Criminal Procedure Code (Act XXV of 1861).] In a reference to the High Court under s. 434 of the Criminal Procedure Code, where Counsel appeared, and the reference from the Judge impeached the order of the Magistrate, the Court called on Counsel to support the argument. *ANGELO v. CARGILL* - - - ix 417

2. — *Small Cause Court references.*] The Right to begin in Small Cause Court references is generally allowed to the plaintiff, but in one case the Counsel for the defendant was allowed to begin where the judgment of the Small Cause Court was in favor of the plaintiff. *HARAN CHANDRA MOOKERJEE v. NUNDAGOPAL MUTTY LALL* - - - xiii 142

RIOT, PARTIES ON OPPOSITE SIDES IN.

See REVISION.

RIPARIAN PROPRIETORS.

See ACCRETION.

RIVAL DECREE-HOLDERS.

See ACT XXIII OF 1861, s. 11.

APPEAL.

RIVAL HAUTS.

See NUISANCE.

RIVER, CHANGE IN COURSE OF.

See ACCRETION.

RIVER, LAND DILUVIATED BY.

See ACCRETION.

RIVER, RE-FORMATION IN NAVIGABLE.

See ACCRETION.

RULE NISI, HEARING OF.

See RIGHT OF REPLY.

RULE OF HIGH COURT. 30th JANUARY, 1865.

See APPEAL IN CRIMINAL CASES.

RULE OF HIGH COURT OF 4th APRIL, 1866—"Proceeding in a civil case." The proceeding by way of mandamus is "a proceeding in a civil case" within the meaning of the Rule of 4th April, 1866. *JUSTICES OF THE PEACE FOR CALCUTTA v. ORIENTAL GAS COMPANY*, viii 423

RULE OF HIGH COURT. 11th JULY, 1871.

See CIVIL PROCEDURE CODE, s. 243.

RULE 12 OF HIGH COURT OF 1st MAY, 1875.

See SUMMONS.

RULE TO SHOW CAUSE—Sufficiency of affidavit.] A Recorder refused an application for execution against certain defendants who came in and confessed judgment before any issue of summons in the suit. The plaintiffs then appealed to the High Court, by petition, for an order that the Recorder should issue execution against the defendants, or that he should show cause for not doing so. The affidavit did not state whether any decree had actually been made. *Held*, that the affidavit was insufficient; the Court cannot grant a rule to show cause, unless it is satisfied that the rule should be made absolute, if no cause be shown. *IN RE COMPTOIR D'ESCOMPTE DE PARIS v. CURRIE AND Co.* - - iii Ap. 153

RULES OF SUPREME COURT—Plea Side—Rule 176.] Rule 176 of the Rules and orders on the Plea Side of the Supreme Court is still in force. *KAILAS CHANDRA BOSE v. BHUBAN CHANDRA BOSE* - - - viii Ap. 18

RULE 25 OF INSOLVENT COURT.

See INSOLVENCY.

RULES 78 TO 81 OF INSOLVENT COURT.

See INSOLVENT ACT, s. 40.

RYOT.

See RIGHT OF OCCUPANCY.

SALARIES OF RAILWAY COMPANY'S SERVANTS.

See ATTACHMENT.

SALARY, RECEIPT OF.

See ACT XXIII OF 1861, s. 8.

CIVIL PROCEDURE CODE, s. 273.

SALARY, SUIT FOR RECOVERY OF.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 2; CL. 16.

SALE, CONFIRMATION OF.

See LIMITATION ACT XIV OF 1859, s. 20.

SALE, CONFIRMATION OF REFUSAL OF ORDER FOR.

See SUPERINTENDENCE OF HIGH COURT.

SALE, INVALIDITY OF.

See ACT XL OF 1858.

SALE, IRREGULARITY IN.

See SALE IN EXECUTION OF DECREE. TRESPASS.

SALE, STAY OF.

See INJUNCTION.
SALE IN EXECUTION OF DECREE.

SALE, SUIT TO SET ASIDE.

See MINOR.
JURISDICTION OF CIVIL COURT.
RES-JUDICATA.
SALE IN EXECUTION OF DECREE.

SALE BY GUARDIAN WITHOUT SANCTION OF THE COURT.

See ACT XL OF 1858.

SALE FOR ARREARS OF RENT.

See ACT X OF 1859, s. 105.
BENG. ACT VIII OF 1865, s. 16.
BENG. ACT IV OF 1870.
HINDU LAW, WIDOW.
REG. VIII OF 1819.
RES-JUDICATA.
TRESPASS.

2. — *Incumbrances—Reg. VIII of 1819.*]
A sale under Reg. VIII of 1819 does not *ipso facto* annul all tenures created by the defaulting patnidar, but the purchaser if he thinks proper can avoid them. MADHUSUDUN KUNDU v. RAMDHAN GANGULI - - - iii A. C. 481

3. — *Deposit to protect tenure from sale.*]
An under-tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. AMBIKA DEBI v. PRANHARI DAS, [iv F. B. 77]

4. — *Deposit to protect tenure from sale—Reg. VIII of 1819—Non-registration of transfer.*]
L. and R., the holders of a patni estate, granted in 1856 a darpatni lease to S. at an annual rent, the lease stipulating that S. should have full power of sale and gift, but should not sublet without the patnidars' consent. The lease contained no stipulation for the registration of any vendee or donee. In 1860, S. sold the darpatni lease to K., the deed of sale which was duly registered providing for mutation of names in the patnidars' books. No such mutation was ever effected by K., who was never recognized as their tenant by L. and R., the rent of the darpatni being paid in the name of S. In 1864, the rent due from the patnidars being in arrear, the zemindar proceeded to sell the patni under Reg. VIII of 1819. Thereupon K., in order to protect his under-tenure, deposited in the Collectorate, on 17th November, 1864, a sum of money, on which the sale was stayed. K., being then in arrear in the pay-

SALE FOR ARREARS OF RENT—continued.

ment of his darpatni rent, claimed to set off the amount deposited in the Collectorate against the rent due to L. and R. This L. and R. refused to allow, and they brought a suit in the Collector's Court against S. and his sureties to recover the arrears of rent. In that suit K. intervened claiming the benefit of the set-off, to which however the High Court, on 26th June, 1868, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by K. On 30th October, 1867, K. brought a regular suit against S. and L. and R. to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal, and the suit dismissed for want of jurisdiction. On 6th June, 1869, K. filed his plaint in the proper Court. Held, that he was entitled to recover the amount deposited by him in the Collectorate. LUCKHINARAIN MITTER v. KHETRO PAL SINGH ROY, xiii P. C. 146

5. — *Deposit to protect tenure from sale—Voluntary payment.*]
The plaintiff purchased an estate at an auction-sale in execution of a decree against the defendant, who was in possession, and after his purchase obtained possession on 6th April, 1866. While he was in possession, one R., the patnidar, sued the defendant to recover arrears of rent which had become due. During the defendant's possession and before the plaintiff's purchase, and in execution of the decree he obtained in this suit, the estate in possession of the plaintiff was attached and ordered by the Collector to be sold; whereupon the plaintiff paid the amount of the decree to save the tenures from sale. In a suit brought to recover the amount,—held, the payment by the plaintiff was, as far as the defendant was concerned, a voluntary payment. Mere inconvenience without risk of actual damage is not sufficient to take away the voluntary character of the payment. RAM BAKSH CHETLANGI v. HRIDOY MANI DEBI - - - viii 10 note

6. — *Reg. VIII of 1819—Right of purchaser—Suit for enhancement of rent—Patni tenure.*]
The purchaser of a patni talook at a sale for arrears of rent under Reg. VIII of 1819, sued for a kabuliat at an enhanced rent. The former patnidar had brought a similar suit, and the Court had declared that the rent was not liable to enhancement. Held, that the purchaser was bound by that decree. TARAPRASAD MITTRA v. RAM NARISING MITTRA, [vi Ap. 5]

7. — *Reg. VIII of 1819, s. 11, cls. 1 & 3—Rate of rent—Incumbrance—Patni tenure.*]
The grantor of a patni tenure who subsequently purchases the lands granted by him in patni at the sale of the patni tenure does not revert *ipso facto* to the possession he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was receiving when he granted the patni, without reference to the rents realized by the patniholder in the interim. MAJORAM OJHA v. NILMONEY SINGH DEO - - - xiii 198

8. — *Purchaser—Notice of sale—Suit to set aside sale.*]
The purchaser of a tenure

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which is liable to be sold under Reg. VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. *DHUNPUT SINGH ROY v. VILLAYET ALI* - - - - - xiii 153 note

Also *BHOMO TARINER DOSSEE v. PROSONNO-MOYE DOSSEE* - - - - - xiii 150 note

9. — *Suit to set aside sale—Deposit of rent in Collector's treasury.* An estate was sold under cl. 2, s. 8, Reg. VIII of 1819, for arrears of rent due by a patnidar to the zemindar. Prior to the date of sale, the amount due was paid by the patnidar to an accountant in the Collector's office, as in satisfaction of arrears, but no notice was given to the zemindar or Collector. A suit was afterwards brought to set aside the sale, on the ground that, in consequence of such payment, there were no arrears due at the time of sale. *Held*, per NORMAN and MACPHERSON, JJ., that the suit could not be maintained. *Per MITTER, J.*—If the custom of the Collectorate was, as alleged by the plaintiff, for payments in satisfaction so to be made to the Collector's accountant, the sale ought to be set aside. *KRISHNA MOHAN SHAHA v. AFTABUDDIN MAHOMED*, [viii 134]

10. — *Sale of sub-tenure—Incumbrances—Reg. VIII of 1831.* Where a sub-tenure had been granted, but no power was reserved to the grantor in the sanad to sell the tenure free from incumbrances in case of default in payment of rent,—*held*, that in a sale for arrears of rent under Reg. VIII of 1831, the purchaser did not take free from incumbrances created by the grantee. The decision in *Shahabooddeen v. Futeh Ali* affirmed. *FORBES v. LUTCHMEPUT SINGH*, x P. C. 139
MOHESH CHUNDER BANERJEE v. CHUNDER MONEE DEBI - - - - - x 150 note

11. — *Incumbrances—Act VIII of 1835.* The plaintiff held certain lands in talook Q., under a howladari potta; Q. was sold for arrears of rent under Act VIII of 1835, and purchased by the defendant. After purchase the defendant dispossessed the plaintiff from his lands, on the ground that he had purchased the talook free from all incumbrances created by the late defaulting talookdar. The plaintiff brought this suit to recover possession of his lands from the defendant, *Held*, that a purchaser of a tenure under Act VIII of 1835 does not necessarily acquire it free from all incumbrances. Case remanded for trial of the genuineness of the plaintiff's potta. *JASIMUDDIN v. MANSUR ALI*, vi Ap. 149

12. — *Under-tenure, sale of—Incumbrances—Act X of 1859, s. 105—Beng. Act VIII of 1865, s. 16.* Under-tenures sold for arrears of rent under s. 105 of Act X of 1859, other than tenures upon which the right of selling for arrears of rent has been especially reserved by stipulation in the engagements interchanged on the creation of the tenures, do not pass

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free from incumbrances. *Semble.*—It was to get rid of this that s. 16 of Beng. Act VIII of 1865 was enacted. *SHAHABOODDEEN v. FUTTEH ALI* - - - - - Sup. Vol. 646

13. — *Patni tenure—Act X of 1859, s. 105—Reg. VIII of 1819.* The provisions of Reg. VIII of 1819 with respect to the sale of under-tenures for arrears of rent being applicable to sales under decrees for rent made under s. 105, Act X of 1859,—*held*, that where a sale has been effected of a "patni talook" under that section, it must be presumed, in the absence of evidence to the contrary, that the tenure was one transferable by sale, and upon the creation of which it was stipulated by the terms of the engagements interchanged that, in case of an arrear occurring, the estate might be brought to sale; in other words, it must be presumed to be a tenure such as is described in the preamble to Reg. VIII of 1819, and the effect of the sale was to annul all incumbrances created by the patnidar. *BRINDABUN CHUNDER SIEGAR CHOWDREY v. BRINDABUN CHUNDER DEY CHOWDREY* - - - - - xiii P. C. 408

14. — *Suit to set aside sale—Decree for sale set aside for fraud.* In a suit to annul the sale of an under-tenure in execution of a decree under Act X of 1859, which was subsequently set aside on the allegation that it had been obtained collusively and by fraud, it was found that neither the decree-holder nor the purchaser was guilty of any fraud. *Held*, that the mere circumstance of the decree under which the sale had taken place having itself been set aside did not invalidate the sale, the plaintiff having failed to show that the purchaser was a party to the fraud which led to the decree and sale. *JUGUL KISHOR BANERJEE v. ABHAYA CHARAN SARMA*, [I A. C. 84]

15. — *Decree for sale set aside on review—Bonâ fide purchaser.* A. purchased a share of B.'s talook at an auction-sale, in execution of an *ex parte* decree obtained against B. under s. 105 of Act X of 1859. B. obtained leave under s. 58 of Act X of 1859 to revive the suit, and succeeded in getting it dismissed. He now sued to set aside the sale to A. *Held*, that the sale to A. was binding against B., notwithstanding that the decree in execution of which it had taken place had been set aside in review, provided the sale was *bonâ fide*. *JAN ALI v. JAN ALI CHOWDREY* - I A. C. 56

16. — *Beng. Act VIII of 1865—Registered tenant.* The plaintiff purchased on 28th of September 1866, the right, title, and interest of one H. in a certain tenure of which G. was the registered tenant. Previously the zemindar had brought a suit against G. for arrears of rent of the tenure and obtained a decree, in execution of which the tenure in question was, on 29th April, 1867, sold to the defendant under Beng. Act VIII of 1865. In a suit by the plaintiff for a declaration of his right in the tenure, and for reversal of the sale to

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the defendant,—*held*, that the suit by the defendant was rightly brought against *G.*, who was the registered tenant, and the arrears being actually due and the sale a *bona fide* one, such sale was valid and binding as against the plaintiff. *FATIMA KHATUN v. THE COLLECTOR OF TIPPERAH* - - - - viii 4 note

17. — *Beng. Act VIII of 1865, s. 16—Right of occupancy under Act X of 1859, s. 6—Right of purchaser—Incumbrance.* A purchaser of a tenure sold under Act VIII of 1865 for arrears of rent cannot, under s. 16, eject a ryot who has acquired a right of occupancy under s. 6. Act X of 1859, under the former tenant. *NILMADHAB KARMOKAR v. SHIBU PAL* - - - - v Ap. 18
PUREDAG SINGH v. PURTAB NARAYAN SINGH - - - - v Ap. 20

18. — *Beng. Act VIII of 1865—Right of purchaser—Fraud.* A purchaser at a sale in execution of a decree held under Beng. Act VIII of 1865 cannot be ousted from the property purchased by him without proof that the decree and sale were fraudulent, and that he (the purchaser) was a party to or had notice of the fraud. *DAMUDAR ROY v. NIMANUND CHUCKERBUTTY* - - - - vii Ap. 1

SALE FOR ARREARS OF RENT, EFFECT OF SETTING ASIDE.

See LIMITATION ACT X OF 1859, s. 32.

SALE FOR ARREARS OF RENT, SUIT TO SET ASIDE.

See CO-SHARERS.

JURISDICTION OF CIVIL COURT.

SALE FOR ARREARS OF REVENUE.

See ACT I OF 1845.

ACT XI OF 1859.

2. — *Enhancement of rent—Reg. XI of 1822, ss. 30, 33—Reg. XLIV of 1793, s. 5—Reg. VIII of 1793, s. 51.* A zemindari was sold for arrears of Government revenue under Reg. XI of 1822. The purchaser's representatives sued to enhance the rent of the under-tenure *Held*, that they had no right to enhance. The rights of the purchaser were defined by ss. 30 and 33 of Reg. XI of 1822, which were repealed by Act XII of 1841, and that Act, with the exception of the 1st and 2nd sections, was again repealed by Act I of 1845. Neither of the two last mentioned Statutes contains any saving of rights acquired under the Statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers at sales for revenue arrears to purchasers at future sales. A sale for arrears of revenue cannot of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, alter the character of an under-tenure. *Semble.*—S. 5, Reg. XLIV of 1793, is now of no force for any purpose, but that of declaring the general principles upon which all the subsequent legislation has proceeded, *viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of a party with whom

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the perpetual settlement of the estate was made. Where an under-tenure existed at the time of the decennial settlement, the only right which the zemindar could exercise over it was that conferred by s. 51 of Reg. VIII of 1793. The decision in the case of *Rancee Surnomoyee v. Maharaja Suttees Chunder Roy* (10 Moore's I. A. 123) commented on, explained, and reiterated. *SATYASARAN GHOSAL v. MAHESH CHANDRA MITTER* - - ii P. C. 23

3. — *Act XI of 1859, ss. 11, 13, 54—Sale of share of zemindari—Incumbrances.* A., in exchange for his lakhiraj land, obtained in 1791 from his zemindar 441 bigas of māl land, which the zemindar thereupon created rent-free. The zemindar fell into arrears, and the zemindari was sold. Subsequently, three persons, who had become owners of the zemindari, applied to the Collector under s. 11, Act XI of 1859, and the Collector opened separate accounts with each of them for the revenue of their respective shares. The revenue due from one of them fell into arrears, and his share, which included the 441 bigas, was sold under s. 13, and purchased by the plaintiff, who now sued the descendants of A. to recover possession. *Held*, that a sale of a share of a zemindari under s. 13, Act XI of 1859, does not convey to the purchaser the share free from all incumbrances created by the former zemindar, but he acquires the share, as laid down in s. 54, subject to all incumbrances. *KASINATH KOOWAR v. BANKU-BEHARI CHOWDHRY* - - - iii A. C. 446

4. — *Act XI of 1859—Setting aside sale.* Where there has been a sale under Act XI of 1859 for arrears of revenue, but it is found that no revenue is actually due to Government, the sale must be set aside as not coming within the provisions of the Act. *MANGINA KHATUN v. THE COLLECTOR OF JESSORE*, [iii Ap. 144]

5. — *Re-purchase by co-proprietor—Rights of under-tenants—Incumbrances—Act XI of 1859, s. 53.* Under s. 53 of Act XI of 1859, a co-proprietor who purchases an estate at a sale for arrears of Government revenue takes it subject to the incumbrances created by the defaulting proprietor. *MAHOMED GAZI CHOWDHRY v. LEICESTER* - - vii Ap. 52

6. — *Right of auction-purchaser—Permanently-settled estate—Incumbrances.* An auction-purchaser at a revenue sale of a permanently-settled estate is remitted to all the rights possessed by the original settler at the date of the settlement. In order to abolish tenures and incumbrances subsequently created, his cause of action dates from his purchase. The existence of such tenures at the date of the permanent settlement must be proved by their holders; the presumption in favor of a purchaser resting upon the principle that every biga of land sold must contribute to the public revenue unless specially exempted. The tendency of recent legislation and decision has been to give force to the contrary presump-

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tions arising from long and undisturbed possession. **FORBES v. MEER MAHOMED HOSSEIN,**

[xii P. C. 210]

7. — *Act XI of 1859—Procedure—Beng. Act VII of 1868—Fines for non-attendance of proprietors before Collector in partition, proceedings under Reg. XIX of 1814.* In sales held by the Collector for the realization of Government demands realizable as arrears of revenue, the procedure laid down in Beng. Act VII of 1868 is to be followed. Therefore where a fine has been imposed for non-attendance of proprietors before a Deputy Collector for the purpose of a partition under Reg. XIX of 1814, and the amount had been ordered to be paid on a given day but was not so paid, but tendered subsequently,—*held*, that the Collector ought not to have sold the property of the defaulters. He was bound to receive the amount tendered. **MOHAN RAM JHA v. SHIB DUTT SING** — — — — — viii 230

8. — *Act XI of 1859, s. 5—Act XI of 1838—Suit to set aside sale—Costs of partition—Sanction of Board of Revenue—Reg. XIX of 1814.* On 12th June, 1867, some of the proprietors of an estate applied to the Collector for a partition under Reg. XIX of 1814. On the same day the Collector issued a notice to all the shareholders, including the plaintiffs in this suit, calling upon them to come in within one month and show such cause and offer such objections, &c., as they should think fit. It did not appear that the plaintiffs did come in or did anything upon this. Similar applications were made by other shareholders. On the 19th August, 1867, the Collector drew out a tabular statement, purporting to be in pursuance of s. 4, Reg. XIX of 1814. In it was a column giving the shares into which the expenses of the partition were to be divided. On the same day a notice was issued to the proprietors, ordering them to pay their respective quotas of the expenses accordingly. It was said by the defendants that the apportionment was confirmed by the Commissioner on the 20th January, 1868. On the 6th March, 1868, it was ordered by the Collector that a proclamation should be issued in accordance with paragraph 4 of s. 5 of Act XI of 1859, directing the plaintiffs, as defaulters in two sums of Rs. 252-3-2 and 9-9-6, to pay the Government revenue. On the 28th March such proclamation was issued accordingly. Subsequently one of the plaintiffs came in, and offered to pay all that was then due and outstanding. His application was rejected, and on the same day, the 8th April, the sale proceeded, and the whole interest of the plaintiffs was sold for Rs. 16,900. The plaintiffs appealed to the Commissioner, but their appeal was dismissed. The plaintiffs therefore brought a suit against the purchasers and the Collector for the recovery of the property and for cancellation of the sale. *Held*, that the sale was void. There was no arrear of Government revenue justifying a sale under Acts XI of 1838 and XI of 1859, s. 5. There could be no

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arrear until demand after sanction by the Board of Revenue and by the Lieutenant-Governor of the estimate of expenses prepared by the Collector, and fixed by the Commissioner. The Board must give its sanction in each case, and the defendants failed to show that it had done so. But even if the Commissioner had power finally to determine the amount and date of payment, it was not shown that he had done so, or supposing that he had, that any fresh demand had been made upon the parties liable. **HAR GOPAL DAS v. RAM GOLAM SAHI** — — — — — v 135

9. — *Act XI of 1859, ss. 10, 11, & 13—Separation of shares—Suit by purchaser at private sale for possession of specific share.* The proprietors of a joint mehal, the jama of which had been partitioned under s. 10, Act XI of 1859, were in possession of specific shares under a private arrangement among themselves, but had not obtained separation of shares under s. 11. One of the proprietors sold his share to the plaintiff, and the shares of two other proprietors who made default in payment of the revenue were sold under s. 13, Act XI of 1859, and purchased by the defendants. In a suit for exclusive possession of the share purchased by the plaintiff,—*held*, that the defendants acquired by their purchase an interest in the property as an undivided estate, and the plaintiff was not entitled as against them to have exclusive possession of any specific share. **GUNGADEN MISSEER v. KHEEROO MUNDUL** — — — — — xiv 170

SALE FOR ARREARS OF REVENUE, SUIT TO SET ASIDE.

See CO-SHARERS.
PARTITION.

SALE IN EXECUTION OF DECREE.

See ACQUESCENCE.
CIVIL PROCEDURE CODE, s. 258.
LETTERS PATENT, CL. 13.
LIMITATION ACT XIV OF 1859,
s. 1, CL. 12.
ONUS PROBANDI.
VAKEEL.

2. — *Security by manager of innatio—Second attachment and sale before security given—Attachment without sale, validity of.* The plaintiff, as manager of the estate of her husband, a lunatic, obtained a decree and attached and became the purchaser of the lands of the defendant in execution of the decree. The Judge required her to give security for the proceeds of the sale before he would allow actual possession to be given to her. The sale was confirmed, but several months elapsed before she found security, and meanwhile the same lands were attached and purchased by other creditors under another decree against the said debtor, and possession was given to them. *Held* (reversing the decision of the High Court), the title of the plaintiff must prevail. The security was ordered for the protection of the lunatic against misappropriation by his manager; it was not a proceeding

SALE IN EXECUTION OF DECREE—continued.

affecting the judgment-debtor. The second sale ought not to have been ordered or confirmed. Under the Code of Civil Procedure, property may be attached without view to immediate sale. **SARODA PROSAUD MULLICK v. LUTCHMEEPUT SING DOOGUR** - x P. C. 214

3. — *Defaulting purchaser—Re-sale—Act VIII of 1859, s. 254.* In execution of a decree, certain property of the judgment-debtor was attached and put up for sale, and a portion thereof was knocked down to a purchaser for a sum sufficient to satisfy the decree. The purchaser, however, having made default in payment of the purchase-money, the property was again put up for sale, and the portion previously sold was purchased by the decree-holder at a price less than the amount bid for it in the former sale. *Held*, that the decree-holder was not debarred by what took place at the former sale from proceeding to satisfy his decree by sale of other portions of the attached property than that originally sold. **KHEBODA MAYI DASI v. GOLAM ABARDARI**, [xiii 114

4. — *Co-sharer in property sold—Suit for damages for sale against decree-holder.* The defendant, in execution of a decree against A., seized certain moveable property, which was claimed under s. 246, Act VIII of 1859, by B. B. was on investigation found to be part owner of the property. B.'s claim was rejected and the sale took place, the property being made over to the purchaser, and the proceeds handed to the defendant in satisfaction of his decree. The sale proclamation declared that the sale extended only to the right, title, and interest of the debtor A., but made no mention of B.'s claim. In a suit by B. for damages against the defendant occasioned by the loss of the property of which he was a joint owner,—*held*, the defendant was not liable. **TAMIZUDDIN MULLA v. NYANUTOLLA SIRKAR** - v Ap. 78 note

5. — *Re-sale by Collector—Suit to set aside sale.* The plaintiff purchased the right, title, and interest of a judgment-debtor in a certain jumma sold in execution of a Small Cause Court decree. Subsequently, the same land was sold by the same creditor in execution of another decree obtained in the Collector's Court, and the defendant purchased. In a suit to set aside the second sale,—*held*, that when a tenure has once been sold in execution of a decree of a Civil Court, the Collector's Court has no power to put it up again as the property of the former tenant. **SAMIRADDI KHALIFA v. HARI CHANDRA** - - - - - iii A. C. 39
WAHID ALI v. SADIQ ALI - - - - - xii 487 note
MOJON MOLLO v. DULA GHAZI KULAN, [xii 492 note

PRAN BANDHU SIRKAR v. SARBASUNDARI DEBI - - - - - iii A. C. 52 note

TIETHANUND THAKOOR v. PARESMON JHA, [x 142 note

DOWLUT GAZI CHOWDREY v. MOONSHEE MUNWAR - - - - - xii 485 note

6. — *Act VIII of 1859, ss. 236 and 243—Irregularity—Prohibitory order—Purchase of*

SALE IN EXECUTION OF DECREE—continued.

property by decree-holder—Practice of English Courts. In execution of a decree the defendant caused a decree of the plaintiff awarding him Rs. 925 to be attached, and, under s. 236, Act VIII of 1859, caused the prohibitory order to be fixed in a conspicuous part of the Court-house, and copies thereof to be delivered to the judgment-debtors. The decree was subsequently sold by auction, and the defendant purchased it for Rs. 20. On special appeal by the plaintiff, upon the ground that the sale was irregular, as the prohibitory order had not been served upon him,—*held*, that the prohibitory order having been served in accordance with the provisions of s. 236, Act VIII, 1859, was legal and regular. *Held* also, that the Court executing the defendant's decree ought not to have sold the plaintiff's decree, but should have, under s. 243, appointed a manager to enforce plaintiff's decree. That a decree-holder ought not to be allowed to bid and purchase at a sale in execution of his decree, without an order of Court previously obtained upon notice to the judgment-debtor. Practice of English Courts regarding sale in execution of decrees discussed. **BANDHU ROY v. HANUMAN SING** - iii A. C. 320

7. — *Irregularity in sale—Proof of damage—Advertisement of sale—Setting aside sale.* When property is advertised to be sold in separate lots, and is afterwards sold in a lump, this is an irregularity, but the person who wishes to set aside the sale on the ground of such irregularity must show affirmatively, to the satisfaction of the Court, that substantial damage has, in fact, been sustained by him on account of such irregularity. Where, therefore, such damage had not been distinctly proved,—*held*, that the sale could not be set aside on the ground of the irregularity complained of. **ROY NANDIPAT MAHATA v. URQUHART** - - - - - iv A. C. 181

8. — *Purchase by decree-holder without leave of Court.* The mere fact of the decree-holder having bid and purchased at the execution sale, without having obtained the license of the Court, does not, *ipso facto*, invalidate the sale. **IN THE MATTER OF VEERAPAH CHETTY** - - - - - vi Ap. 37

9. — *Decree afterwards set aside as having been passed without jurisdiction—Invalidity of sale.* Under a decree passed by a Court which had no jurisdiction to try the suit, the right, title, and interest of the judgment-debtor A. in a certain property was sold, and purchased by B. The decree was, after the sale, set aside as having been passed without jurisdiction. In a suit by A. against B. for confirmation of possession, on the ground that B. was about to take possession of the property under the purchase,—*held*, that the sale in execution was a nullity, as the decree had been passed without jurisdiction. **Jan Ali v. Jan Ali Chondry** (i A. C. 56) and **Pearemonce Dassee v. The Collector of Beerbhoom** (8 W. R. 300) distinguished. **JADU NATH KUNDU CHOWDREY v. BRAJA NATH KUNDU** - - - - - vi Ap. 90

SALE IN EXECUTION OF DECREE—continued.

10. — *Execution of decree barred at time of sale—Purchase by decree-holder.*] *G. A.* obtained a decree against *M.* Afterwards *L. N.*, who had obtained a decree against *G. A.*, attached the decree which he (*G. A.*) had obtained against *M.*, and, upon sale in execution, became himself the purchaser of that decree. It afterwards appeared that the decree held by *L. N.* against *G. A.* was barred by limitation. *Held*, that the execution of *L. N.*'s decree against *G. A.* being barred by lapse of time at the time of sale, the sale was invalid. *GOLAM AFGAR v. LAKHIMANI DEBI* - v 68

11. — *Separate suit for declaration that decree was barred by limitation at time of sale.*] *A.* sued for possession of certain lands to which he alleged he was entitled as wussee (executor) under a wusseeutnamah (will), and which *B.* had fraudulently, during the minority of himself and his brother, caused to be put up for sale under a decree, the execution of which was barred by lapse of time. *B.* had become the purchaser at such sale. *Held*, that a suit would not lie for the purpose of having it determined that the execution of *B.*'s decree was barred. *NOJABUT ALI CHOWDREY v. MOHA BUSSEEROLAH CHOWDREY* - xi 42

12. — *Suit to set aside sale—Bonâ-fide purchaser.*] It cannot be laid down as a general proposition of law that, under no circumstances, can a sale in execution of a decree be set aside as against a bonâ fide purchaser for valuable consideration and without notice. In a suit brought to set aside such a sale, it is for the Court to determine whether it will be in accordance with the principle of justice, equity, and good conscience, that the sale ought to be set aside, or not. *ABDUL HYE v. NAWAB RAJ*, [Sup. Vol. 911]

13. — *Suit to recover purchase-money when judgment-debtor had no interest.*] A decree-holder caused certain property to be sold by auction in execution of his decree, alleging it to belong to his judgment-debtor. He purchased it himself, and set off the price against the amount of his decree, which was thus satisfied. It was afterwards found that the judgment-debtor had no interest in the property, and it was recovered by the real owner. *Held*, that no fresh execution of the decree could issue against the judgment-debtor. The decree-holder could not recover his purchase-money. He was in no better position than a stranger. *MAHOMED BASIRULLA v. SHEIKH ABDULLA* - - - - - iv Ap. 35

14. — *Suit to recover purchase-money when judgment-debtor had no interest—Right of purchaser—Act VIII of 1859, ss. 257, 258.*] When an auction-purchaser at a sale in execution of a decree buys the right, title, and interest of the judgment-debtor in the property sold in execution, and it is subsequently found that the judgment-debtor had no right, title, or interest whatever in the property, no suit will lie against the decree-holder or the judgment-debtor to recover back

SALE IN EXECUTION OF DECREE—continued.

the money which the auction-purchaser has paid. Although a purchaser may, under s. 258 of Act VIII of 1859, recover his purchase-money, it is only when the sale is set aside for irregularity under s. 257. *SOWDAMINI CHOWDRAIN v. KRISHNA KISHOR PODDAR*, [iv F. B. 11]

See also *RAJIBLOCHUN v. BIMALAMONT DAS*, [ii A. C. 82]

15. — *Liability of decree-holder and purchaser to refund to owner loss caused by sale of property wrongly seized and sold.*] In execution of a decree against a judgment-debtor, his right, title, and interest in an elephant was sold. In a suit by a third party against the decree-holder and the purchaser for recovery of the elephant or its value, on the ground that the elephant was his property, and not the property of the judgment-debtor,—*held*, that the decree-holder, as well as the purchaser, was liable to make good the loss caused by such sale. *KANAI PRASAD BOSE v. HIRACHAND MANU* - - - - - v Ap. 71

See *SURJAN BIBEE v. SHEIKH SARIUTULLA*, [iii A. C. 413]

16. — *Purchase of surplus proceeds of revenue sale afterwards set aside—Suit to recover purchase-money—Voluntary payment.*] An estate of which *R.* was one of the registered shareholders was sold for arrears of revenue, and the amount realized, after deducting the arrears and the expenses of the sale, remained in deposit with the Collector. *S.*, the holder of a decree against *R.*, notwithstanding objections made by *R.*, caused the interest of *R.* in the surplus proceeds in the hands of the Collector to be attached and sold in execution of his decree. At the execution-sale *R.*'s interest was bought by *B.*, and from the money paid by him the judgment-debt of *S.*, and the debts of other judgment-creditors of *R.*, were satisfied. In the meanwhile *R.* brought a suit to set aside the revenue sale of the estate, and obtained a decree in his favor in the High Court. *B.* then applied to the Collector for *R.*'s share of the surplus proceeds, but his application was refused. In a suit by *B.* against *R.* to recover the price he had paid at the execution-sale: *held*, reversing the judgment of the High Court, that such a suit could not be maintained. *RAM TUHUL SINGH v. BISSESWAR LAL SAHOO*, [xv P. C. 208]

Reversing the judgment of the High Court in *BISSESSUR LALL SAHOO v. RAM TUHUL SINGH* - - - - - xi 121

17. *Mortgage—Covenant not to alienate—Right of purchaser.*] *A.* gave a mortgage to *B.* of certain property as a security for money lent, and covenanted not to alienate the property by gift, ijara, patni, or otherwise, by which loss might be caused to the existing actual assets of the property. *A.* subsequently granted a patni to *C.* *B.* obtained a decree against *A.* for the amount of the loan, and the property was sold in default of payment. *D.*

SALE IN EXECUTION OF DECREE—continued.

was the purchaser at the auction-sale. *Held*, that *D.* could maintain his suit against *C.* to set aside the patni and for possession, *BRAJARAJ KISHORI DAS v. MOHAMED SALENO*. [i A. C. 152]

18. — *Stay of sale in regard to a particular property—Other property of judgment-debtor.* To save a particular property from sale, a judgment-debtor must show the value and condition of other properties in her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be made so as to avoid the sale of the property already attached. *DEB KUMARI BIBEE v. RAM LALL MOOKERJEE*. [iii Ap. 107]

SALE IN EXECUTION OF DECREE MADE WITHOUT JURISDICTION.

See CIVIL PROCEDURE CODE, s. 246.

SALE IN EXECUTION OF DECREE, ORDER CONFIRMING.

See APPEAL TO PRIVY COUNCIL.

SALE IN EXECUTION OF DECREE, PURCHASER AT.

See LIS PENDENS.

SALE IN EXECUTION OF DECREE, REFUSAL TO STAY.

See CIVIL PROCEDURE CODE, s. 246.

SALE OF GOODS.

See CONTRACT.
CONTRACT ACT, s. 73.
SHIPMENTS.

SALE OF GOODS BY WHOLESALE.

See LIMITATION ACT XIV OF 1859, s. 1, CLS. 9 AND 10.

SALT, CONFISCATION OF.

See BENG. ACT VII OF 1864, s. 18.

SANAD—Rent-free sanad—Purchaser at Government sale—Confirmation issued by Government. In 1775 a rent-free sanad was granted to *M.* for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men and take care of the ryots. *M.* died and a fresh sanad was, in 1786, granted to *K.* and *R.*, they being thought to be his heirs; but in 1807, *M.*'s true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to *K.* and *R.*, reciting the circumstances. The zemindari in which these lands were situated was settled in 1802, and was in 1850 sold for arrears of Government revenue; the appellant claimed to set aside the sanad of 1807, on the ground that Government had no right to give such a sanad, but he contended that, if it had, it could be set aside by a purchaser at a Government sale. *Held*, that the sanad was not a new grant, but a confirmation of the one made before the decennial settlement, and that Government was competent to give such confirmation. *LOPEZ v. MADDAN MOHAN THAKUR* - v P. C. 521

2. — *Lost Sanad—Evidence—Reg. II of 1819, s. 28—Reg. XIV of 1825, s. 3—Title.*

SANAD—continued.

Where an alleged original sanad was lost, the Judicial Committee, in view of the strict nature of the proof required in cases of claim under ancient sanads by Reg. II of 1819, s. 28, and XIV of 1825, s. 3, and taking all the circumstances into consideration, refused to consider the title under it established. *FORESTER v. SECRETARY OF STATE*, [xii P. C. 120]

SANAD TO GOMASTA TO COLLECT RENTS.

See STAMP ACT X OF 1862.

SANCTION OF BOARD OF REVENUE.

See PARTITION.

SANCTION TO PROCEEDINGS IN LUNACY.

See LUNATIC.

SANCTION TO PROSECUTION.

See ACT XXVII OF 1870.

REGISTRATION ACT XX OF 1866
s. 95.

2. — *Forgery—Criminal Procedure Code (Act XXV of 1861), s. 170.* A specially registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently, the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence, or making further enquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code. *Held*, that he was justified in sanctioning the prosecution, but not in setting aside the decree. *QUEEN v. NAWAB SINGH* - - - iii A. Cr. 9

3. — *Perjury.* Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed at any time, even after the order for commitment to the sessions has been made. *IN RE QUEEN v. GOLAB SINGH* - - - iii A. Cr. 10

4. — *Sufficiency of sanction.* In a suit by *A.* for arrears of rent above Rs. 100, a decree was passed against *B.*, *C.*, and *D.*, wherein certain documents filed by them were held to be forgeries. *A.* applied for and obtained an order from the Deputy Collector who tried the suit, for leave to prosecute *B.* and *C.* in the Criminal Court. *A.* afterwards applied to the Collector for leave to prosecute *B.*, *C.*, and *D.*, whereupon the Collector passed the following order:—"Sanction has already been given once by the Deputy Collector. I, however, have no objection to give it a second time, as the petitioner desires it." *D.* was convicted by the Sessions Judge on a charge under s. 471 of the Penal Code. On appeal by *D.*, *held*, that no proper leave had been obtained to prosecute *D.*, and this defect was not cured by the subsequent proceedings, and the conviction must be quashed. *QUEEN v. MAHIMA CHANDRA CHUCKERBUTTY* - - - vii 26

5. — *Sufficiency of sanction—Criminal Procedure Code (Act XXV of 1861), ss. 169 and 170.* Where persons were charged with

SANCTION TO PROSECUTION—continued.

offences under ss. 471 and 193 of the Penal Code, committed in proceedings before the Civil Court, and for which therefore the sanction of the Civil Court was necessary under ss. 169 and 170 of Act XXV of 1861,—*held*, that the sanction, which simply gave permission, and did not specify the particular act or acts and the particular words which constituted the offences, was insufficient. **QUEEN v. GABIND CHANDRA GHOSE** - - - - - vii 28 note

6. — *Trial finished without sanction.*] Where a charge was instituted without the necessary sanction, and the accused was tried and committed, the High Court refused to interfere, being of opinion that there was nothing to entitle the accused to the benefit of the exceptions in s. 426 of the Criminal Procedure Code. **KIRTI OJHA v. RAJKUMAR** - - - vii 29 note

SCHEDULE, VERIFICATION OF, BY AFFIDAVIT.

See INSOLVENT ACT, s. 6.

SECURITY BY MANAGER OF ESTATE OF LUNATIC.

See SALE IN EXECUTION OF DECREE.

SECURITY, DEPOSIT OF.

See DEPOSIT OF TITLE-DEEDS.

SHIP, ARREST OF.

SMALL CAUSE COURT, PRESIDENCY TOWNS.

SECURITY FOR COSTS.

See CIVIL PROCEDURE CODE, SS. 34 AND 342

INSOLVENT ACT, s. 73.

SMALL CAUSE COURT, PRESIDENCY TOWNS.

SECURITY FOR PAST LOAN.

See BANK OF BENGAL.

SECURITY FOR STAY OF EXECUTION.

See EXECUTION OF DECREE.

SENTENCE.

See WHIPPING.

2. — *Cumulative sentences—Rescuing from lawful custody and using criminal force—Penal Code, ss. 224, 225, and 353.*] Where substantially but one offence has been committed, and the acts, which are the basis of one charge, are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under s. 224 for escape, s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force in so doing, and sentenced to separate punishments under each section,—*held*, that the prisoners had only done one act, and were guilty of only one offence, and should have been found guilty under ss. 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly. **QUEEN v. KALISANKAR SANDYAL** - - - - - iii A. Cr. 14
QUEEN v. DINA SHEIKH - - - - - iii A. Cr. 15 note

3. — *Commutation of—Penal Code, ss. 59, 376, 511—Attempt at rape.*] A. was convicted of an attempt to commit rape, and was

SENTENCE—continued.

sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under s. 59 of the Penal Code, to transportation for the same term. *Held* that, under ss. 376 and 511 of the Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term. **QUEEN v. MERIAM** - i A. Cr. 5

4. — *Commutation of—Enhancement of punishment—Whipping—Rigorous imprisonment.*] Upon conviction of the offence of housebreaking, the accused was sentenced by the Deputy Magistrate to six months' rigorous imprisonment, and to be whipped. On appeal, the Judge found that, as this was the first offence, the additional punishment of whipping was illegal; and setting aside so much of the sentence, passed a sentence of three months' rigorous imprisonment, in addition to the six months' rigorous imprisonment passed by the Deputy Magistrate. *Held*, that the commutation of the punishment was illegal. **QUEEN v. BANDA ALI** - - - - - vi Ap. 95

5. — *Commutation of—Powers under Act XV of 1862, s. 1—Penal Code, s. 59—Imprisonment or transportation.*] An officer who, in the exercise of the powers described in s. 1, Act XV of 1862, has passed a sentence of imprisonment for seven years, has power, under s. 59 of the Penal Code, to commute that sentence into one of transportation for the like period. **JACKSON, J.**, dissented. **QUEEN v. BOODHOOA** - - - - - Sup. Vol. 869

6. — *Mitigation of—Criminal Procedure Code (Act XXV of 1861), ss. 405 and 428—Power of High Court.*] The High Court can, under ss. 405 and 428 of the Criminal Procedure Code, mitigate a sentence passed by a Magistrate and confirmed or altered on appeal by the Sessions Judge, on the ground that the sentence was excessive. **IN THE MATTER OF THE PETITION OF BISSEMBHUR SHAHA.**

[Sup. Vol. 484]

7. — *Reversal of—Criminal Procedure Code (Act XXV of 1861), s. 426.*] A. was charged with the offence of voluntarily causing hurt to C., and B. was charged with the same offence, and also with the offence of abetting A. The Magistrate found A. guilty of the offence, and sentenced him to three months' rigorous imprisonment. The Magistrate also found B. guilty of abetment of the offence of voluntarily causing hurt to C., and sentenced him to one month's rigorous imprisonment and a fine. On appeal, the Sessions Judge held that there was no evidence to convict A., and he accordingly released the prisoner. The appeal of B., however, was rejected on the ground that the evidence, though it did not prove him guilty of abetment, proved him guilty of voluntarily causing hurt, and therefore, under s. 426 of the Code of Criminal Procedure, the sentence could not be reversed. No "error or defect either

SENTENCE—continued.

in the charge or in the proceedings on trial" was alleged. *Held* (by MITTER, J.), that s. 426 of the Code of Criminal Procedure did not apply. **QUEEN v. MAHENDRANATH CHATTERJEE,**

[v Ap. 39]

8. — *Imprisonment—Postponement of sentence—Criminal Procedure Code (Act XXV of 1861), ss. 46, 47, 48, and 421.* A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Procedure Code, a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor, except as provided for by s. 421 of the Code of Criminal Procedure, can a sentence, which is to take place immediately, be suspended. **IN THE MATTER OF KRISHNANAND BHUTTACHARJEE,**

[iii A. Cr. 50]

SENTENCES, SEPARATE.

See APPEAL IN CRIMINAL CASES.

SEPARATE ACQUISITION.

See HINDU LAW, JOINT FAMILY.

SEPARATE ESTATE.

See HUSBAND AND WIFE.
SUCCESSION ACT, s. 4.

SEPARATE OFFENCES, CONVICTION FOR.

See REVISION.

SERVANT.

See LIMITATION ACT XIV OF 1859,
s. 1, CL. 2.
MASTER AND SERVANT.

SERVANT, DOMESTIC.

See ACT XIII OF 1859.

SERVANT REMUNERATED BY FEES.

See PUBLIC SERVANT.

SERVICE OF PROCESS, COST OF.

See ACT XXIII OF 1861, s. 2.

SERVICE OF PROHIBITORY ORDER.

See CIVIL PROCEDURE CODE, s. 239.

SERVICE OF SUMMONS—Service in foreign territory—Act VIII of 1859, ss. 60 and 66.] A summons cannot be sent by post to any place to which letters are not registered by a post-office. A special bailiff cannot be sent to serve civil process in a foreign territory. **KASIM AJIM DUPLAY v. KASIM MOHAMMED BARUCHA** - - - - - ii A. C. 59

2. — *Irregular service—Ground for objecting to decree—Joint promissory note.]* An irregular service of summons on two out of three defendants to an action brought on a joint promissory note, does not give the third defendant, who has been properly served, ground for objecting to a decree which has been passed against him under Act V of 1866. **EWING v. GOSAI DAS GHOSH** - - - - - ii Ap. 7

3. — *Service on partner for co-partner—Agent—Act VIII of 1859, s. 17, cl. 2.]* Service of summons on one partner for his co-partner is a good service. **Lutchmeput Dogar v. Shib-**

SERVICE OF SUMMONS—continued.

narain Mundle (1 Hyde 97) dissented from. **RAMCHANDRA BOSE v. SNEAD** - vii Ap. 58

4. — *Service of summons on one partner for his co-partner is not sufficient service unless the service is effected at the place where the partnership business is carried on.* **KUSTOOR MULL v. JOKEERAM** - xi Ap. 26

5. — *Military officer—Sufficiency of service.]* Service of summons on a military officer was effected by transmitting a copy by post to the commanding officer at Secundrabad, where the defendant was stationed, and it was returned with the defendant's acknowledgment endorsed on it, and with a certificate that it had been duly served, but there was no affidavit of service: service was held to be sufficiently proved. **HARRISON v. HOPE** - xi Ap. 43

6. — *Defendant resident in another district—Act X of 1859, ss. 47, 56.]* In a suit for rent under Act X of 1859, service of summons on a defendant, whose abode is in another district, by a peon from the Court of the Collector of the district in which the suit is brought, instead of through the Collector of the district in which the defendant resides, as required by s. 47 of the Act, is not such an irregularity as vitiates the whole proceedings and renders the decree, and a sale in execution thereof, void. *Per* JACKSON, J.—The words in s. 56, "upon proof that the summons or proclamation has been duly served according to the provisions of this Act," refer to the mode in which a summons is to be served, and not to the agency by which it is to be served. **MACKINTOSH v. KALLY DOSS MULICK** - - - - - xi 1

SERVICE OF SUMMONS, FINE FOR AVOIDING.

See CIVIL PROCEDURE CODE, s. 365.
WITNESSES.

SERVICE OF SUMMONS, TIME ALLOWED FOR.

See SMALL CAUSE COURT, PRESIDENCY TOWNS.

SERVICE TENURES.

See GHATWALI TENURE.

SESSIONS JUDGE, POWER OF.

See DISCHARGE OF ACCUSED.
FALSE EVIDENCE.
JURISDICTION OF CRIMINAL COURT.

PENAL CODE, s. 457.

REGISTRATION ACT XX OF 1866,
s. 95.

SET-OFF.

See EVIDENCE, CIVIL CASES.

2. — *Raising issue of set-off on trial—Procedure.]* When a defendant raises a claim of set-off, on the trial of that issue, he must be considered as plaintiff. **JAGADAMBA DAS v. GHOB** - - - - - v 639

3. — *Act VIII of 1859, s. 121—Cross-decree.]* A., by deed of zuripeshgi, let certain lands to B. to secure a sum advanced by him to her and interest thereon. B. covenanted to pay certain dues annually to A. On failure by B., A. obtained a decree against him for

SET-OFF—continued.

the amount. In execution of a decree against *B.*, *C.* purchased his interest in the sum secured by the deed of *zurpeshgi*, and sued *A.* to recover the same. *Held*, that *A.* was entitled in such suit to set off the amount of the decree obtained by her against *B.* *BHAGAWANI KUNWAR v. LALA BALJNATH PRASAD* ii A. C. 84

4. — *Act VIII of 1859, s. 121—Co-sharers—Suit for Contribution.*] In a suit brought against a lessee of a portion of an estate by one of the co-sharers for money alleged to be due as the plaintiff's share of arrears of rent for a certain period, where the claim was admitted,—*held*, the defendant was not entitled to set off, under s. 121, Act VIII of 1859, the plaintiff's share of the Government revenue of the whole estate which had been paid by the defendant for the period for which the arrears of rent were alleged to be due. *Held* also, that there was no such connexion between the claim of the plaintiff and the counter-claim of the defendant as would entitle the defendant, as a matter of equity apart from legislative enactment, to a set-off. *HOSSEINA BIBI v. SMITH*, [xiii 440

5. — *Cross-decrees—Act VIII of 1859, s. 209.*] *A.* and *B.*, having obtained a decree for a sum of money against *C.* and *D.*, sold part of their interest therein to *E.*, who afterwards sold the same to *F.* *G.* obtained a decree against *F.*, and in execution attached and sold *F.*'s interest in the decree obtained by *A.* and *B.* and *H.*, became the purchaser of the same. He applied for execution against *C.* and *D.* *C.* claimed to have set-off the amount of a decree obtained by his son *I.* against *G.*, and which *C.* alleged was held by *I.* benamee for him as a cross-decree within the meaning of s. 209 of Act VIII of 1859. *Held*, that the decree could not be set-off. *TARACHAND GHOSE v. ANAND CHANDRA CHOWDREY* iii A. C. 110

6. — *Cross-decrees—Purchaser of decree—Act VIII of 1859, s. 209.*] The purchaser of a decree held by *A.*, against whom *B.* holds a cross-decree, takes it subject to a set-off on account of *B.*'s decree. *KAIM ALI JAWARDAR v. LAKHIKANT CHUCKERBUTTY* — i F. B. 23

7. — *Purchaser of decree—Act VIII of 1859, s. 209.*] The purchaser of a decree sought to execute the decree, but was opposed by the judgment-debtor, who sought to set off two other decrees obtained by herself and her two sisters against the judgment-creditor. These decrees were obtained about the date of the purchase, but it did not appear whether previously or subsequently. *Held*, in neither case could they be the subject of a set-off. *KASIMUNISSA BIBI v. HILLS* — vi Ap. 125

8. — *Act VIII of 1859, s. 209.*] Act VIII of 1859, s. 209, which provides for the set-off of cross-decrees, applies only to decrees of the same Court or decrees sent to a Court for execution. Therefore where, on application for execution of a decree in the Court of a Principal Sudder Ameen, it was sought to set-off a decree obtained in the Judge's Court, which had not been sent to the Principal Sudder Ameen for

SET-OFF—continued.

execution,—*held*, that s. 209, Act VIII of 1859, did not apply. *GIRISHCHANDRA LAHURY v. FAKIR CHAND* — — — Sup. Vol. 503

9. — *Cross-decrees—Act VIII of 1859, s. 209.*] Where there were cross-decrees, and one of the decree-holders was, by an order of the Court made with the consent of both parties, bound in executing his decree to set-off the amount of the decree against him,—*held*, that it would be inequitable to allow the other decree-holder to obtain execution in full, without setting-off the amount decreed against him. *HARO SANKER SANDYAL v. TARAK CHANDRA BHUTTACHARJEE* — — — iii A. C. 114

10. — *Cross-decrees—Assignment of Decree—Act VIII of 1859, s. 209—Act XXIII of 1861, s. 11.*] The plaintiffs obtained a decree against *B.* in the Subordinate Judge's Court. Some time afterwards *B.* recovered a decree in the Munsif's Court against the plaintiffs. The plaintiffs thereupon applied for the attachment of this decree in satisfaction of their own against *B.* Before attachment, however, *B.* assigned her decree to *C.* On *C.* trying to execute *B.*'s decree against the plaintiffs, they brought the present suit for a declaration of their right to have a set-off made of the two decrees. *Held*, that such a suit would not lie. *RUGHU NUNDUN RAIN v. SUMESSAR PANDAY* — — — — — xiii 439

SETTLEMENT.*See COVENANT TO RENEW.*

2. — *Suit to set aside—Resumption.*] In a suit by a person claiming certain lands which have been resumed by the Government, the plaintiff is entitled, on the allegation that he is the rightful owner of the lands, and that the defendant obtained a settlement by false allegations of ownership and of possession, to an adjudication of his right to a settlement. It is not discretionary with the Collector under such circumstances to settle with any person he pleases for the land, nor is such settlement, if made, final as regards all claims. *MAHOMED ISRAILE v. WISE* — — — xiii F. B. 118

3. — *Right to—Estates separately numbered.*] Certain lands accreted to an estate, No. 667, and were temporarily settled as a separate estate, No. 3148. During the currency of this settlement, the owner sold his rights and interests in 667 to the plaintiff, and in 3148 to the defendants. On the expiry of the temporary settlement, the plaintiff, as owner of the parent estate, sued to establish his right to the permanent settlement of 3148. *Held*, that the suit would not lie, and that the plaintiff had no claim to have a settlement of 3148. *KHUB LAL v. GHINA HAZARI*, [ii A. C. 339

4. — *Powers of Revenue Boards—Resumption—Cancellation of settlement.*] A settlement of a resumed lakhiraj estate being made by the Collector with the plaintiff "subject to the orders of the Board of Revenue," the Board, or the Commissioner acting under rules laid down by them, may cancel the settlement at

SETTLEMENT—continued.

any time. **HARLAL TEWARI v. THE COLLECTOR OF BHAUGULPORE** — — — iii Ap. 82

5. — *Invalid lakhiraj—Effect of resumption and settlement of lakhiraj.* Assessment of revenue by Government upon invalid lakhiraj land after resumption, does not confer a new estate on the lakhirajdar, and does not cancel or extinguish a mokurari lease granted by the lakhirajdar previously to the settlement, and during the time he was in possession of the land as lakhiraj. **PRATAB NARAYAN MOOKERJEE v. MADHU SUDAN MOOKERJEE**, viii 197

6. — *Claim to settlement after resumption—Reg. II of 1819—Ex-lakhirajdar—Limitation.* Long possession gives no title to a settlement, unless the party claiming a settlement has put forward his claim when the lands were resumed and the notice has issued to parties to assert their claims to such settlements, and has thus complied with the requirements of the law. **GOLACK CHANDRA CHOWDHRY v. ALI MOLLAH**, [viii 528 note

7. — An ex-lakhirajdar whose lands have been resumed by Government under Reg. II of 1819, has no absolute right to a settlement. When a party claims a right to a settlement as being an ex-proprietor, and his claim is rejected, he must, to avoid being barred by limitation, sue within three years for a declaration of his right. **BHIKU SINGH v. GOVERNMENT** — — — viii 529 note and xiii 119 note

See **KRISHNA CHANDRA SANDYAL CHOWDHRY v. HARISH CHANDRA CHOWDHRY**, [viii 524

SETTLEMENT AWARD.

See ACT XIII OF 1848.

SETTLEMENT, SUIT FOR DECLARATION OF RIGHT TO PARTICIPATION IN.

See *LIMITATION ACT XIV OF 1859*, s. 1, CL. 12.

PARTIES.**SETTLEMENT, SUIT TO SET ASIDE.**

See **PARTIES**.

SETTLEMENT, WIFE'S EQUITY TO.

See **HUSBAND AND WIFE**.

SHAREHOLDERS.

See **CO-SHARERS**.

KABULIAT, SUIT FOR.**SHARES—Blank Transfer—Cause of action.**

Shares in the National Bank were sold by the allottee, and a transfer in the form required by the articles of association of the Bank was executed, but no name was inserted as transferee. The purchaser pledged them with the I. P. L. and China Bank, and deposited with them the blank transfer. This Bank applied to the National Bank without producing a letter from the pledgor to register their lien, and on its refusal sold the shares to the plaintiff and delivered to him the transfer, also in blank. The plaintiff inserted his own name in the transfer, and requested the National Bank to register the shares in his name. In an action against the National Bank to recover the price of the

SHARES—continued.

shares,—*held*, that they were justified in refusing to register. *Held* also, that the plaintiff having received back from his vendors the price of his shares, had no cause of action. **KNOWLES v. THE NATIONAL BANK OF INDIA**, [ii O. C. 153

SHARES IN FAMILY PROPERTY, SUIT TO ASCERTAIN.

See **DECLARATORY DECREE, SUIT FOR.**

SHARES OF JOINT MEHAL, SEPARATION OF.

See **SALE FOR ARREARS OF REVENUE.**

SHEBAIT.

See **HINDU LAW, ENDOWMENT.**

SHIP. ARREST OF—Deposit of security with Marshal—Application for arrest of deposit in another action—Admiralty Court, practice of. The ship *M.* having been arrested in an action promoted by the master of the ship *N.*, for damage caused by a collision, in which the *N.*, with her cargo, was totally lost, deposited with the Marshal of the Court certain Government paper as security to answer the alleged damage, on which the *M.* was released. The cargo of the *N.* had been insured, and on the loss thereof the Insurance Company paid the amount of the policy, and instituted proceedings against the *M.* in respect of the loss of the cargo. *Held*, the Court had no power to grant an application by the Insurance Company for the arrest of the security in the hands of the Marshal, so as to make it answerable in their action. **TRITON INSURANCE COMPANY v. THE MOORHILL**; *In re* **THE MOORHILL** — — — — — iv Ap. 3

SHIP, SALE OF.

See **BOTTOMRY BOND-HOLDER.**

SHIPMENTS—Consignment of goods—Bills of exchange—Presumption of payment of—Sale of goods. The plaintiffs in London and the defendant in Calcutta had dealings, which consisted in the defendant shipping jute cuttings and rejections to the plaintiffs in certain quantities, and within certain limits as to price, the defendant drawing bills on the plaintiffs in respect of such goods, which the plaintiffs accepted. The plaintiffs alleged that there was an agreement between them and the defendant, that in case of shipments in excess of the limits given by the plaintiffs, they should at their option receive the goods on their own account, or treat them as consignments on account of the defendant, but the defendant denied there was any such arrangement. The defendant made several shipments in excess of the plaintiffs' limits, and the plaintiffs treated them as consignments on the defendant's account, selling them on defendant's account and forwarding him account sales, and drawing bills on the defendant for any balance due to them in the transactions, which bills the defendant refused to pay. In an action brought by the plaintiffs for the balance due to them from the defendant in respect of the shipments which had been treated by the plaintiffs as consignments in the defendant's account, the

SHIPMENTS—continued.

defendant admitted he had sold the bills and received the money for them; they were produced by the plaintiffs, the acceptors. *Held*, that the bills being produced by the acceptors after due date, and the defendant having received a notice of dishonour, and no demand for payment of the bills, the presumption was that they had been paid by the plaintiffs. In exercising their option of treating shipments in excess of their limits as on their own account or as consignments on account of the defendant, the plaintiffs were entitled to treat each shipment separately, and were not compelled to decide on an average of the shipments taken all together. *SHEARMAN v. FLEMING* - - - - - v 619

SIGNATURE OF JAILOR.

See PRISONERS' TESTIMONY ACT.

SIGNATURE, SUFFICIENCY OF.

See CONTRACT.
WILL.

SLANDER, ACTION FOR—*Misjoinder—Special damage.* An action for slander cannot be brought jointly against several defendants: separate actions should be brought against each. *Quere.*—Whether words implying "you are a drunkard, thief, cheat, and the paramour of your sister-in-law, you bastard," applied to a Brahmin, are actionable *per se* without allegation of special damage? *NILMADHUB MOOKERJEE v. DOOKEEHAM KHOTTAH* - xv 161

2. — An action for slander may be brought jointly against several defendants where the words spoken are not actionable *per se*, but only become so by reason of the special damage, which is the result of the conjoint action of all the defendants. *WOOLEERUNNISA BIBEE v. MAHOMED HOSSEIN*, [xv 166 note]

SLAUGHTER HOUSE.

See NUISANCE.

SMALL CAUSE COURT, CALCUTTA.

See PLEADER.
SMALL CAUSE COURT, PRESIDENCY TOWNS.

SMALL CAUSE COURT, EXECUTION OF DECREE OF.

See BAILMENT.
CIVIL PROCEDURE CODE, s. 286.

SMALL CAUSE COURT, JUDGE OF.

See CIVIL PROCEDURE CODE, s. 78.
REVIEW.

SMALL CAUSE COURT, JURISDICTION OF.

See ATTACHMENT.
BILLS OF EXCHANGE ACT.
CONTEMPT OF COURT.
SPECIAL APPEAL.

SMALL CAUSE COURT, LAW OF.

See CONTRACT ACT, s. 27.

SMALL CAUSE COURT, MOFUSSIL.

See CIVIL PROCEDURE CODE, s. 386.
PRISONERS' TESTIMONY ACT.
REVIEW.
SPECIAL APPEAL.

SMALL CAUSE COURT, MOFUSSIL—contd.

2. — *Jurisdiction—Title, questions of—Act XLII of 1860.* Plaintiff sued defendant in the Small Cause Court for damages for having cut down and removed trees from plaintiff's land. Defendant pleaded that he was entitled to do so under his patta. *Held*, the Court had jurisdiction to try the question of the genuineness of the patta. *RAGHU RAM BISWAS v. RAM CHANDRA DOBAY* - Sup. Vol. 34

3. — *Mutiny Act (30 and 31 Vict., c. 13), s. 99—Camp-followers—Jurisdiction of Civil Court.* The defendant, a native of India, attached to the mess of a European regiment stationed at Sinchal, was held to come within the provisions of s. 2 of the Mutiny Act (30 and 31 Vict., c. 13) as being a "follower in or of Her Majesty's Indian forces," and therefore to be, by s. 99, exempt while in that position from the jurisdiction of the Civil Court. *NASIRUDDIN v. KHODABAKSH*, [ii S. N. vii]

4. — *Military officers.* The 99th section of the Mutiny Act (30 and 31 Vict., c. 13) exempts officers in all places in India, where any body of Her Majesty's force may be serving, from the jurisdiction of the Civil Courts in respect of personal actions. Where the defendants were residents of Sinchal and Jallapahar, and attached to the troops stationed there,—*held*, that they were not amenable to the jurisdiction of the Small Cause Court at Darjeeling. *HOSSEIN v. DICKENSON* - - - ii S. N. iii

5. — *Civil Procedure Code, s. 327—Arbitration.* When a matter has been referred to arbitration without the intervention of any Court, a Small Cause Court in the mofussil has jurisdiction to entertain an application, under s. 327 of Act VIII of 1859, to file the award, provided it relates to a debt not exceeding the amount cognizable by such Court, and the defendant resides within its jurisdiction. *ELAM PARAMANICK v. SOJAITULLAH SHEIKH*, [i A. C. 43]

6. — *Joint bond—One of parties out of jurisdiction—Act XI of 1865, s. 12.* In a suit brought on a bond jointly executed by the defendants, one of whom resided in Calcutta, and the other within the jurisdiction of the Munsif's Court at Alipore,—*held*, that it was cognizable by the Small Cause Court although the authority of the High Court was necessary before it was tried, and therefore, under s. 12, Act XI of 1865, the Munsif had no jurisdiction to try the suit. *KHODA BAKSH MISTRI v. BENI MANDAL* - - - vi 719 note

7. — *Suit on instalment bond for nuzzur or salami.* Plaintiff sued in a Small Cause Court on an instalment bond for Rs. 81. The bond had been executed for nazzar or salami contemporaneously with the execution of a patta and kabuliast, by which the defendants agreed to pay the plaintiff Rs. 335 a year for two years, as rent for certain land. The patta and kabuliast had not been registered. A previous suit brought by the plaintiff, under Act X of 1859, had been therefore dismissed,

SMALL CAUSE COURT, MOFUSSIL—contd.

and no oral evidence was admitted to prove the terms of the patta and kabuliast. *Held*, the suit on the bond was properly cognizable by the Small Cause Court as a simple debt due under the bond. It was clearly not for rent, nor was it an abwab or illegal cess; whether it was nazari or salami was immaterial. **DINANATH MOOKERJEE v. DEBNATH MULLICK** - - - - - v Ap. 1

8. — *Suit for wages.* A suit for wages under Rs. 50, alleged to be due from an European British subject to a native, can be tried in a Small Cause Court in the mofussil. **RAMJAN BEG v. COOK** - - - - - vi Ap. 91

9. — *Suit to recover money on bond and to declare lien on property mortgaged by bond.* A suit, the object of which is not only the recovery of money due upon a bond, but also a declaration of the plaintiff's lien on the property mortgaged by the bond, is not cognizable by the Small Cause Court. **RAM NARAYAN MOOKERJEE v. SARODA DEBI**, [vi Ap. 39]

10. — *Suit for contribution by co-sharer who has paid whole Government revenue.* Where one of several co-sharers in an estate paying revenue to Government has paid the revenue due upon the whole estate to prevent it from being sold, a Small Cause Court has no jurisdiction to entertain a suit brought by him against the other co-sharers for contribution. **RAMBUX CHITTANGEK v. MODOSOODUN PAUL CHOWDHRY** - - - - - Sup. Vol. 675

11. — *Suit for contribution.* A Small Cause Court has no jurisdiction to try a suit for contribution. **TAMIZUDDIN MIRDHA v. GAFFUR KHAN** - - - - - vii Ap. 40

12. — A suit for contribution, where there is no contract, express or implied, cannot be entertained by a Small Cause Court. **SREEPUTTY ROY v. LOHARAM ROY** - Sup. Vol. 687

13. — *Suit by surety against principal for recovery of money paid on his account—Suit for contribution.* A suit by a surety for recovery of a sum not exceeding Rs. 500, which he had to pay on account of his principal, is cognizable by a Small Cause Court. A suit for contribution is not cognizable by a Small Cause Court, unless there is a contract, express or implied, between the parties. **SHABOO MAJEE v. NOORAI MOLLAH; JONEEP v. SHEIKH NABOO; BHARUT CHUNDER DUTT v. DENGAR GOPE** - - - - - Sup. Vol. 691

14. — *Act XI of 1865, s. 6.—Title, questions of.* A Small Cause Court has no jurisdiction to entertain a suit by a decree-holder to establish his judgment-debtor's title to property seized in execution, which has subsequently been released to a claimant under s. 246, Act VIII of 1859, and to recover the value of the property from the successful claimant. **RAM DHUN BISWAS v. KEFAL BISWAS** - - - - - i S. N. x

15. — *Act X of 1859, s. 10.—Suit for share of value of crops.* The plaintiff, as bur-

SMALL CAUSE COURT, MOFUSSIL—contd.

ghadar, to whom the defendant had sublet his jote land, for the purpose of raising crops of kalai, under a contract to share the produce between themselves, sought to recover from the defendant Rs. 7-14 as the value of his share of the crops which he (the defendant) appropriated to his own use. The defendant denied the existence of any such contract, and contended that an action of this nature would lie only in the Revenue Court, and not in the Small Cause Court. *Held*, that the plaintiff's claim was not one for a sum exacted in excess of rent within the meaning of s. 10 of Act X of 1859, and consequently the suit would lie in the Small Cause Court. **GARBULLA PARAMANICK v. FAKIR MAHOMED KOLU** - - - - - i S. N. xiii

16. — *Alternative relief—Act XI of 1865, s. 6.* In a suit by A., asking that B. might be ordered to fill up an excavation or to pay him Rs. 25 as damages for the same, it appeared that there was no ground for the first relief sought. *Held*, the suit was cognizable by the Court of Small Causes. **NANDA KUMAR BANERJEE v. ISHAN CHANDRA BANERJEE**, [i A. C. 91]

17. — *Execution of decrees.* S. 19, Act XI of 1865, provides merely for cases in which the party in whose favor a decree is given applies for immediate execution, either against the person or against the moveable property of the debtor. **ANONYMOUS CASE** - Sup. Vol. 886

18. — *Act XI of 1865, ss. 19 and 20.—Huts—Moveable property.* Huts are not "moveable property" within the meaning of Act XI of 1865. **RAJ CHANDRA BOSE v. DHARMACHANDRA BOSE** - - - - - ii A. C. 77, viii 510 note
ROHINI KANT GHOSE v. MAHABHARAT NAG, [viii 514 note]

19. — *Sale in execution of decree of Small Cause Court—Right of purchaser.* A hut is not "moveable property" within the meaning of s. 19 of Act XI of 1865. A Small Cause Court has no jurisdiction to sell a hut. A purchaser of a hut sold by a Small Cause Court in execution of a decree acquires no title to it. **NATTU MIAH v. NAND RANI** viii F. B. 508

Contra, **KASHI CHANDRA DUTT v. JADUNATH CHUCKERBUTTY** - - - - - viii 512 note

20. — *Growing crops.* Growing crops are "immoveable property," and execution of a decree of a Small Cause Court cannot be had against them under s. 19 of Act XI of 1865. **GOPAL CHANDRA BISWAS v. RAMJAN SIRDAR**, [v 194]

21. — *Thatoh.* Suit to recover a thatoh of a value less than Rs. 500 must be brought in the Small Cause Court. A thatoh, especially when severed from the house, is moveable property. **RAJKUMAR MOOKERJEE v. PRANNATH MOOKERJEE** - - - - - vii Ap. 41

22. — *Act XI of 1865, s. 21.—New trial—Procedure.* A defendant desiring a new trial of a case decreed against him in a Small Cause Court must deposit in Court the amount of the

SMALL CAUSE COURT, MOFUSSIL—contd.

decree passed against him and costs, at the time of giving notice of his intention to apply for the new trial. A subsequent deposit, though made within seven days from the date of the decision, will not entitle the party to ask for a new trial. *Semble*.—The "next sitting of the Court" mentioned in s. 21, Act XI of 1865, refers to the next sitting after the decision complained of; and the words "within the period of seven days from the date of the decision" apply to cases in which the sittings of the Small Cause Court are not held consecutively by reason of the same Judge being the Judge of more than one Court. *KAILAS CHANDRA SANNEL v. DOWLAT SHEIKH*, [v Ap. 57]

23. — *Act XI of 1865, s. 22—Reference to High Court—New trial, application for—Act X of 1867, s. 1.* When the judgment of a Small Cause Court is called in question by one of the parties on a point of law, such as that damages have been assessed on a wrong principle, his proper course is to apply for a new trial. The facts not being disputed, the Judge may grant a new trial as to what amount of damages were sustained; and in determining that question, he may alter his opinion as to the principle on which damages ought to be assessed, and upon the new trial assess them on the proper principle. A question of law arising on an application for a new trial, is a question which may be referred to the High Court for its opinion as a question within the meaning of s. 1, Act X of 1867, arising at any point in the proceedings previous to the hearing of a suit. The hearing in a new trial is a hearing within Act XI of 1865, s. 22. An application for a new trial is a point in the proceedings previous to the hearing. *ISAN CHANDRA SING v. HARAN SIRDAR*, III A. C. 135

24. — Under s. 22 of Act XI of 1865, only questions which arise in the trial of a suit, and not questions which arise on an application for execution, can be referred by the Small Cause Court to the High Court. *ANAND CHANDRA MAZUMDAR v. GOBARDHAN KHAN*, [Sup. Vol. 457]

See also Bank of Bengal v. Currie, where the Court refused to entertain the questions relating to the execution of the decree in the case referred and to priorities of certain decree-holders who were not before the Court, [III A. C. 396]

SMALL CAUSE COURT, PRESIDENCY TOWNS—Rules of pleading—Limitation. *Per* PEACOCK, C. J., and NORMAN, J.—It is competent for a Judge of the Court of Small Causes, of his own motion, to notice the point of limitation, and to decide a case upon that issue, such issue not having been raised by the defendant. *Per* MARKBY, J.—It is not competent for such Judge to raise this point, and decide the case thereon, after the case of both parties is closed. Lapse of time does not oust the jurisdiction of the Court. *PAYNE v. CONSTABLE* - I O. C. 49

SMALL CAUSE COURT, PRESIDENCY TOWNS—continued.

2. — *Jurisdiction—Registration Act (XX of 1866), ss. 52 and 53.* Small Cause Courts in the Presidency towns have no jurisdiction to entertain petitions and make decrees under the provisions of ss. 52 and 53, Act XX of 1866. *IN THE MATTER OF ACT XX OF 1866 AND IN THE MATTER OF NIL KAMAL BANERJEE v. MADHUSUDAN CHOWDREY* - - vi 177

3. — *Second new trial.* It is competent to the Judges of the Calcutta Small Cause Court to grant a second new trial of the same case. *PURSON CHUND GOLACHA v. KAJOORAM*, [x 355]

4. — *Rules of practice—Rule 3—Act IX of 1850, s. 26—Time for service of summons—Short date summons.* Under s. 26 of Act IX of 1850, the time for service of summons on a defendant sued in the Small Cause Court must in all cases be fixed by the rules for regulating the practice of the Court; consequently the Court has no power, under the 3rd rule of Practice, to order service of summons on a defendant at any time before trial. The last six words of that rule are *ultra vires*. *BHAIRABDAN RAMCHAND v. BASSANTLAL BHAGAT* - - - ix 256

5. — *Act IX of 1850, s. 28—Act XXVI of 1864, s. 2—Sum added to legal claim for purpose of giving jurisdiction.* A plaintiff cannot give jurisdiction to the Small Cause Court by adding to his claim sums which he could not, under any circumstances, be entitled to recover. *Sikhur Chund v. Sooringmull* distinguished. *BONOMALLY NAWN v. CAMPBELL*, [x 193]

6. — *Act IX of 1850, ss. 58, 88—Goods and Chattels—Moveable, property—Tiled huts.* Tiled huts are not "goods and chattels" within the meaning of s. 58, Act IX of 1850, and therefore cannot be taken in execution under that section. Where tiled huts had been seized under a decree of the Small Cause Court, and a third party interpleaded under s. 88 of Act IX of 1850, and claimed the huts, held, that the Court having no power to seize the huts was right in dismissing the claim. *KALLY-PERSAUD SING v. HOOLAS CHUND* - x F. B. 448

7. — *Reference to High Court—Giving instructions to Counsel—Attorney—Letters Patent, cl. 10.* Giving instructions to Counsel in references from the Small Cause Court is acting for the suitor within cl. 10 of the Letters Patent of the High Court, and can only be done by an Attorney of the Court. *MORAN v. DEWAN ALI SIRANG* - - - viii 418

8. — *Act XXVI of 1864, s. 7—Re-hearing of case on new trial by two Judges.* Where a case has been heard by a single Judge of the Small Cause Court, and a new trial has been applied for, and the case has been re-heard by two Judges, the Court is bound, under s. 7, Act XXVI of 1864, to refer the case for the opinion of the High Court if requested to do so by either party to the suit, though the Judges

SMALL CAUSE COURT, PRESIDENCY TOWNS—
continued.

do not entertain any doubt or differ in opinion. **MADHAB CHANDRA RUDAR v. AMRIT SING NARAYAN SING ; AMRIT SING NARAYAN SING v. MADHAB CHANDRA RUDAR** - - - v 111

9. — *Act IX of 1850, s. 55, and Act XXVI of 1864, s. 8—Procedure.* The Small Cause Court Acts (IX of 1850 and XXVI of 1864) form one procedure, and the High Court can therefore exercise, in cases referred under s. 55 of Act IX of 1850, the extended powers given to it by s. 8 of Act XXVI of 1864. **MIA KHAN v. BIBI BIBIJAN** - - - v 500

10. — *Costs—Act XXVI of 1864, s. 8—Non-appearance of parties at whose request case is referred—Deposit of security.* Where a case had been referred from the Small Cause Court for the opinion of the High Court, at the request of the plaintiffs, and they neither deposited any security for the costs of the reference, nor appeared in the High Court,—*held*, the case was not properly before the Court, and an application for costs by the defendant, who did not appear, was therefore refused. **RAJKUMAR PARAMANIK v. STEWART** v Ap. 23

11. — Where a case had been referred from the Small Cause Court for the opinion of the High Court, at the request of the plaintiffs, and they neither deposited any security for the cost of the reference, nor appeared in the High Court,—*Held*, the defendants, who appeared, were entitled to judgment and to an order that the plaintiffs should pay the costs of reference and other expenses connected therewith. **DISSENT V. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA** - - - v Ap. 24

12. — *Deposit of security for costs—Act XXVI of 1864, s. 8.* A case should not be referred to the High Court by a Judge of the Small Cause Court, until security has been deposited in accordance with s. 8, Act XXVI of 1864, by the party against whom the judgment has been given. If such party do not deposit the security "forthwith," he must be taken to submit to the judgment of the Small Cause Court. Where, however, a case was sent up without security for costs being deposited, and before the case was heard the plaintiffs tendered a sum as security, which the Judge refused to accept as being too late, the High Court, on the sum being deposited, and it appearing that the defendant would not be prejudiced by such a course, allowed the case to be heard. **FORNARO v. RAMNABAIN SOOKDEB**, [xiv 180

13. — *Case referred at request of party—Nonappearance of such party before High Court—Costs.* When a case is referred by the Small Cause Court for the opinion of the High Court, at the request of one of the parties, and such party does not appear in the High Court, the decision must be given against him, whether security has been given for the costs of the reference and the amount of the judgment or not, and he must pay the costs of the reference. **WILLIAMSON v. ARAB ISMAIL KHAN** - - - - - xi 415

SMALL CAUSE COURT, PRESIDENCY TOWNS—
continued.

14. — *Act XXVI of 1864, s. 7—Application to Small Cause Court for new trial—Judgment contingent on opinion of High Court.* The decision of a Small Cause Court rejecting an application for a new trial, but making such rejection contingent upon the opinion of the High Court, is not such a judgment as can be referred under s. 7, Act XXVI of 1864. **HALL v. JOAKIM** - - - - - xii 34

See also MACKINTOSH v. GILL xii 37

SMALL CAUSE COURT, RANGOON—Establishment of—Act XXI of 1863—Act XI of 1865, Local Government. Act XXI of 1863, after establishing Recorders' Courts in British Burmah, and fixing the limits of their jurisdiction, enacts by s. 10 that, "save as in this Act provided, no Court other than the Recorder's Court shall have or exercise any civil jurisdiction whatever within the limits for the time being fixed as aforesaid." Act XI of 1865, after declaring that the words "Local Government" should denote "the person authorized to administer the Executive Government in such part," enacts, by s. 3, that the Local Government may, with the previous sanction of the Governor-General in Council, constitute Courts of Small Causes under that Act at any place within the territories under such Government. By s. 3 the Judge of such Small Cause Court was to be appointed by the Local Government. Act XI of 1865 does not repeal s. 10 of Act XXI of 1863. By notification dated 1st September, 1869, the Governor-General appointed a Judge of the Small Cause Court at Rangoon, extended the provisions of Act III of 1864 to British Burmah, and invested the Chief Commissioner of British Burmah with the powers conferred on a Local Government by that Act. By notification of 2nd October, 1869, the Governor-General in Council sanctioned the establishment of a Court of Small Causes in Rangoon under s. 3, Act XI of 1865, extended the jurisdiction of the said Court to an amount not exceeding Rs 1,000, and notified that the territorial jurisdiction would be co-extensive with that of the existing Small Cause Court jurisdiction of the Recorder's Court at Rangoon. *Held*, that the Small Cause Court at Rangoon so established was properly constituted. There is nothing to show that the words "Local Government," as used in Act XI of 1865, were intended to include a Chief Commissioner. **KO SHOAY DOON v. SHOAY GAN**, [vi 196

SNAKE CHARMERS, DEATH CAUSED BY.

See MURDER.

SOLICITOR, DUTY OF—Attorney and client. It is the duty of a solicitor, who has once undertaken a cause, to carry it to a conclusion. **IN RE A SOLICITOR** - - - iv P. C. 29

This was an observation made in some remarks addressed by the Judicial Committee to a solicitor who, having obtained a final order in an appeal, had abstained from carrying that order to its proper termination.

SOLICITOR, DUTY OF—continued.

It was intimated subsequently that it was not intended to have any judicial authority, being only a personal admonition addressed to the solicitor and having reference to the peculiar circumstances of his case - iv P. C. 51

SOLITARY CONFINEMENT—Penal Code, s. 74.]

Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code, it is to be imposed at intervals. IN THE MATTER OF NYAN SUK METHER - - - iii A. Cr. 49

SOMAJ, BREACH OF AGREEMENT TO JOIN.

See CONTRACT.

SOMAJ, EXCLUSION FROM.

See DECLARATORY DECREE, SUIT FOR.

SPECIAL APPEAL.

See APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME. ISSUES.

PRIVY COUNCIL, PRACTICE OF. REVIEW.

2. — *Power of High Court—Ground for admitting appeal after delay.*] It is competent to the High Court in special appeal to look into the grounds which a Judge has given for admitting an appeal after the lapse of the prescribed time. On appeal to the High Court against the decree of a subordinate Court, every thing which preceded that decree as an act of Court, is open to revision. MOWRI BEWA v. SUBENDRA NATH ROY - - - ii A. C. 184

3. — *Grounds of special appeal, form of.*] The grounds of special appeal must not be vague and indistinct, conveying no information to the respondent what the point of law is that he has to meet. NAND KISHOR DAS v. RAM KALP ROY - - - vi Ap. 49

4. — *Jurisdiction of Small Cause Court—Act XI of 1865, s. 6—Suit for mesne profits—Act XXIII of 1861, s. 27.*] In a suit brought in the Sudder Ameen's Court for Rs. 133 for mesne profits, it was objected on special appeal that, under s. 27, Act XXIII of 1861, no special appeal would lie, the suit being cognizable by the Small Cause Court. *Held*, it being merely a suit for mesne profits and no question of right or title arising in it, it was a suit for damages within s. 6, Act XI of 1865, and therefore cognizable by the Small Cause Court. RAM PYARI DEBI v. DINANATH MOOKERJEE ii S. N. xiii

5. — *Suit for recovery of money stolen from Court.*] A sum of money was stolen from the Judge's Court of Tippera while A. was the Nazir. A. paid the amount to Government, and died, leaving B. his heir. B. sued Government for recovery of the amount paid by A., on the ground that as there was no negligence of A., and as the amount was under the custody of the guards of Government, at the time of the theft, A. was not responsible for the loss thereof. *Held*, the suit was cognizable by a Small Cause Court, and therefore, under s. 27, Act XXIII of 1861, no special appeal lay to the High Court. COLLECTOR OF TIPPERA v. MAFIZUNNISSA BIBI - - - iv Ap. 46

SPECIAL APPEAL—continued.

6. — *Suit for damages for assault.*] No suit for damages occasioned by personal injury will lie in the Small Cause Courts, unless actual pecuniary loss has resulted from such injury to the plaintiff. When there is no such pecuniary loss, the suit for damages will lie in the ordinary Civil Courts, and a special appeal will lie to the High Court, although the damages claimed are below Rs. 500. ALI BUKSH v. SHEIKH SAMIRUDDIN - - - iv A. C. 31

7. — *Suit for defamation of character.*] Suits for defamation of character, where there has not been any actual pecuniary loss, are not, under cl. 3, s. 6, Act XI of 1865, cognizable by the Small Cause Courts, and therefore in such a suit a special appeal will lie under Act XXIII of 1861, s. 27. BHAIKAB CHANDRA CHUCKERBUTTY v. MAHENDRA CHANDRA CHUCKERBUTTY - - - iv Ap. 59

8. — *Suit for money paid as excess of rent.*] In a suit for recovery of a sum of money less than Rs. 500, as money paid in excess of rent due,—*held*, that the suit being cognizable by the Court of Small Causes under s. 6, Act XI of 1865, no special appeal lay to the High Court. SIB SAHAYA SUKUL v. BIRCHANDRA JUBARAJ - - - ii A. C. 172

9. — *Suit by widow to recover sum taken from deceased.*] The widow and heiress of a deceased person sued the defendants to recover personal property, valued at Rs. 200, said to have been taken by them from deceased in his lifetime. *Held*, that a special appeal was barred by s. 27, Act XXIII of 1861. KAPARI BEWA v. KESHRAM KUCH - - - ii Ap. 23

10. — *Suit to recover a share of malikana.*] A suit to recover a share of malikana, which the defendant had realized from the Collector, is a suit for recovery of a sum of money which has been taken away by the defendants to the damage of the plaintiff, and is therefore cognizable by the Small Cause Court; and under s. 27, Act XXIII of 1861, no special appeal lies from a judgment passed in appeal in such a suit. LASMANI DEBIA v. MAHOMMED HAFEZULLA - - - iii Ap. 96

11. — *Small Cause Court—Jurisdiction—Award*] When the subject-matter of an award is as to its nature and value cognizable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. BANU v. NARAYAN SAHU - - - iv Ap. 83

12. — *Decree for land under a compromise in a suit cognizable by a Small Cause Court.*] In a suit for recovery of a sum of money below Rs. 500, the parties entered into a compromise, whereby the defendant made over a certain piece of land in lieu of the money claimed, and a decree was passed accordingly. In execution of the decree, disputes arose between the parties. Upon special appeal by the judgment-debtor to the High Court, *held* that, under s. 27, Act XXIII of 1861, no special appeal lay to the High Court. TALAN BIBI v. TENU BIBI - - - vi Ap. 83

SPECIAL APPEAL—continued.

13. — *Suit cognizable by Small Cause Court — Injury to reputation.* The defendant charged the plaintiff with plotting to murder him, and the case came before the Magistrate, and was dismissed. The plaintiff then sued in the Munsif's Court for damages on account of the injury "to his reputation and pain of body and mind" caused by the malicious prosecution, and laid the damages at Rs. 100. A special appeal to the High Court was dismissed on the ground that it was a suit cognizable by a Small Cause Court. **NADIAR CHAND ROY v. BAIKANT NATH MISSEER** - - - iv A. C. 33 note

14. — The defendant laid a charge of assault against the plaintiff before the Magistrate, and the charge was heard and dismissed. The plaintiff then brought a suit for damages occasioned to his reputation by the false and malicious charge, laying the damages at Rs. 150 : but no actual pecuniary loss in consequence of the charge was alleged. *Held*, that it was not a suit cognizable by the Small Cause Court, and therefore a special appeal would lie. **FRANKRISHNA BANERJEE v. NADIAR CHAND CHATTERJEE** - - - iv A. C. 35 note

15. — *Act VIII of 1859, s. 387—Act XLII of 1860—Act XXIII of 1861, ss. 27 and 44.* No special appeal lies in a suit of a nature cognizable by a Small Cause Court, although the suit may have been instituted before Act XXIII of 1861 came into operation. **SOOJO COOMAR SURMA ROY v. KRISHTO COOMAR CHOWDHRY** - - - xii F. B. 224

16. — *Order in execution of decree.* No special appeal lies from a regular appeal from an order made in execution of a decree passed in a suit of a nature cognizable by a Small Cause Court, though the suit was instituted before the passing of Act XLII of 1860. **GORA CHAND MISSEER v. RAJA BOYKANTO NARAIN SINGH** - - - xii F. B. 261

17. — *Order in execution of decree—Act XXIII of 1861, ss. 11 and 44—Act VIII of 1859, ss. 257, 269, and 372.* A special appeal will lie from an order passed on appeal in relation to the execution of a decree. **MAHOMED HOSSEIN v. AFZUL ALI** - - - Sup. Vol. Ap. 1

18. — *Appeal heard ex parte.* A special appeal lies from a regular appeal heard *ex parte*. **TARA CHAND GHOSE v. ANAND CHANDRA CHOWDHRY** - - - ii A. C. 110

19. — *Order under s. 257, Act VIII of 1859.* No special appeal will lie from the decision affirming or reversing an order under s. 257, Act VIII of 1859, confirming a sale. **JACKSON J., dissented. KOOLDEEP NARAIN SING v. LUCKHUN SING** - - - Sup. Vol. 917

20. — *Suit for arrears of rent—Beng. Act VIII of 1859, s. 102.* *D. C. S.*, the zemindar, brought a suit against *B.*, a ryot, for recovery of arrears of rent valued below Rs. 100, to which *N. C. A.*, who claimed under a mokurari title, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in

SPECIAL APPEAL—continued.

favor of the plaintiff. On appeal by *N. C. A.*, which was heard and decided by the Subordinate Judge, on reference by the District Judge, the decree of the first Court was reversed, and the suit dismissed. *Held*, a special appeal lay to the High Court. **DAYAL CHAND SAHOY v. NABIN CHANDRA ADHIKARI**, [viii 180

ISWAR CHUNDRA SEN v. BEPIN BEHARI ROY, [viii 188 note

21. — *Beng. Act VIII of 1859, s. 102.* In suits for recovery of rent below Rs. 100, a special appeal lies to the High Court from the decision in appeal by a Subordinate Judge. **MAHOMED MUNOOR MEA v. JYBUNEE**, x Ap. 39

22. — In a suit for arrears of rent below Rs. 100, an appeal lies to the High Court from a decree passed in appeal by an Additional Judge. **NOBOKISTO KOONDOL v. NAZIR MAHOMED SHEIKH** - - - x Ap. 30

23. — *Order finding proceedings to enforce decree not bonâ fide—Act XIV of 1859, s. 20.* The question as to whether proceedings which had been taken to execute a decree had been taken *bonâ fide* to keep alive such decree, is a question of fact, and no special appeal lies from an order finding that the proceedings taken were *bonâ fide*. **BHUBAN MOHAN CHATTOPADHYA v. SAUDAMINI DEBI**, v Ap. 59

24. — *Question of fact—Proceeding to enforce decree—Act XIV of 1859, s. 20.* The question whether the action of the judgment creditor taken in execution of his decree is a proceeding taken to enforce the decree within the meaning of s. 20, Act XIV of 1859, is a question of fact for the decision of the Courts below, and not one of law on which to bring a special appeal to the High Court. **ISHAD ALI v. RADHU SHAH** - - - xiii Ap. 1

25. — *Question of fact—Finding on evidence.* The finding of a fact by the lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal. **GURU DAS DEY v. SAMBHUNATH CHUOKERBUTTY** - - - iii A. C. 258

26. — *Right of way—Question of fact.* In suits to enforce a right of way, the question whether the plaintiff has a right of way or not, is a question of fact to be determined by the evidence he produces of user. Where, on the evidence the Judge found the plaintiff had not a right of way, *held*, there was no error of law which gave the plaintiff a right to a special appeal. **MAHOMED ALI v. JUGAL RAM CHANDRA** - - - v Ap. 84

27. — *Finding of fact—Ground of special appeal.* A finding of fact arrived at upon reasons purely speculative amounts to a mis-trial, which can be set aside by the High Court in special appeal. **MAHOMED AIZADDI SHAHA v. SHAFFI MULLA** - - - viii 26

28. — *Finding of fact—Ground of special appeal.* A finding of a fact by the lower Appellate Court was set aside on special

SPECIAL APPEAL—continued.

appeal, and the case was remanded on the ground that the Judge assumed a state of things in favor of the defendant which the defendant had not urged, and which was contradictory to his case, and because the finding of the Judge was opposed to a proper inference which arose from such facts. **SURBESWAR GHOSH v. CHOTO ARIZOLLAH MANDAL**, viii Ap. 78

29. — *Interest on decree, discretion of Court in allowing.*] The Court executing a decree has a discretion in allowing interest, which will not be interfered with in special appeal. **PARES NATH MUKHOPADHYA v. KISTOMOCHAN SAHA** — — — — — iii Ap. 105

30. — Special appeal allowed, and case remanded for re-trial, where the lower Appellate Court had drawn conclusions from the evidence not warranted by law or reason, and had failed to try a material issue in the case. **MAHARAM SHEIKH v. NAKOWRI DAS MAHALDAR** — — — — — vii Ap. 17

31. — *Error in law—Evidence.*] The investigation of a case upon a portion of the evidence, excluding the other portion under a mistaken impression that it was not legal evidence but conjecture, is an investigation erroneous in law, and is likely to produce an error in the decision of the case on its merits. The mode in which evidence is to be dealt with discussed. **MATHURA PANDEY v. RAM RUCHA TEWARI** — — — — — iii A. C. 108

32. — *Error in law—Omission to direct local investigation.*] It is not an error in law in the investigation of a case where the Courts below do not direct a local investigation of their own motion when they are not asked by the parties to do so. **MACDONALD v. MUNAR ROY** — — — — — Sup. Vol. 358

33. — *Improper mode of dealing with evidence—Remand.*] On special appeal it appearing that the Judge had dealt with the evidence in the case in an improper manner, it was pointed out where he had committed errors, and the case was remanded that he might pass a fresh decision upon it. **RAM DAS SAHA v. MAN MAHINI DAS** — vii Ap. 4

SPECIAL APPEAL, ORDER REFUSING TO ADMIT.

See REVIEW.

SPECIAL DAMAGE, ALLEGATION OF.

See SLANDER.

SPECIAL LEAVE TO APPEAL.

See PRIVY COUNCIL, PRACTICE OF.

SPECIFIC APPROPRIATION.

See INSOLVENCY.

SPECIFIC PERFORMANCE.

See CHAMPERTY.

CONTRACT.

EVIDENCE, PAROL EVIDENCE.

REGISTRATION ACT XX OF 1866,
ss. 83 and 84.

VENDOR AND PURCHASER.

2. — *Contract—Agreement.*] The plaintiff lent defendant Rs. 20,000, and received

SPECIFIC PERFORMANCE—continued.

a document in the following terms:—"On demand we promise to pay S. V. Mutu Ramen Chetty and C. T. A. Chiniah Chetty the sum of rupees twenty thousand, value received. Memo. For the above promissory note, the grant of the dockyard and offices to be deposited in three days, and a proper agreement drawn out. The time of credit to be one year or eighteen months, the interest at Rs. 1-10 per cent. per mensem." In a suit to compel specific performance and for damages for breach of the agreement contained in the above memo., *held*, that the memo. contained an agreement of which a Court of Equity would grant specific performance, had not defendant rendered specific performance impossible. **CURRIE v. MUTU RAMEN CHETTY**, [iii A. C. 136]

3. — *Contract—Failure to register—Unregistered document.*] The plaintiff contracted with the defendant for the purchase of a piece of land, and paid him part of the purchase-money, it being agreed that the balance should be paid after registration of the bill of sale. The defendant kept the document with him, but failed to get it registered. In a suit by the plaintiff to enforce specific performance, *held*, the suit would lie. **TRIPURA SUNDARI v. RASIK CHANDRA KANUNGUI**, [vi Ap. 134]

See RAHMATULLA v. SARIUTULLA KAGCHI, [i F. B. 58]

TULSI SAHU v. MAHADEO DAS — ii A. C. 105

FATI CHAND SAHU v. LILAMBER SING DAS — — — — — ix P. C. 433

PRABHURAM HAZRA v. ROBINSON, iii Ap. 49

4. — *Contract for sale of land by Receiver—Misdescription—Purchaser having personal knowledge—Title to land between high and low-water mark.*] The defendant, who for twelve years had occupied land as tenant, purchased the land at a sale by the Receiver, but refused to complete the purchase on the ground of material misdescription in the advertisement of sale; in that a road and ghat, comprised within the boundaries mentioned in the advertisement, were not the property of the parties whose land the Receiver purported to sell, and also that, to make up the quantity of land as stated in the advertisement, viz., twenty bigas by estimation, land lying between high and low-water mark had been taken into calculation. The owners of the property sold having brought a suit against the defendant for specific performance, the defendant contended that the Receiver was a necessary party to the suit, and that the sale had been rescinded by a statement of the Receiver that he would forfeit the deposit in the event of the defendant not carrying out his contract. In support of his objection to quantity, the defendant relied on a Collectorate chitta as showing that the area of the land sold was only 9 bigas, 8 katas, 10½ chittaks; the same chitta, however, in giving the eastern boundary of the property, described it as lying "on the west of the

SPECIFIC PERFORMANCE—continued.

low-water of the Ganga." *Held*, that there had been no rescission of the contract; that the plaintiffs, being owners of the land down to low-water mark, were entitled to all subsequent accretions, and were, therefore, entitled to include in their measurement all land down to low-water mark; and, having regard to the fact that the defendant was personally acquainted with the property sold, it was not open to him to repudiate the contract on the ground of misdescription. The plaintiffs were entitled, therefore, to a decree for specific performance. *GANGADHAR SIRKAR v. KASINATH BISWAS* - - - - - ix 128.

SPLITTING CAUSE OF ACTION.

See CIVIL PROCEDURE CODE, s. 7.
CO-SHARERS.

STAMP.

See APPELLATE COURT.
COURT FEES ACT.
VALUATION OF SUIT.

2. — *Act X of 1862, s. 14—Transfer of tenure—Admissibility in evidence.*] The transfer of an under-tenure, endorsed upon the back of the tenant's patta, is not admissible in evidence, unless it be stamped as though it were a separate deed. *TETAI ABOM v. GAGAI GURA CHAWA* - - - - - iii Ap. 30

3. — *Act X of 1862, s. 17—Insufficient stamp.*] S. 17 of Act X of 1862 only applies to the reception of documents under s. 15, which have been insufficiently stamped, not to documents on which there is no stamp. Such documents should not be received at all. *LALJI SINGH v. SYAD AKRAM SER* - - - iii A. C. 235

4. — *Intention to evade Stamp Laws.*] A bond executed between a plaintiff who sued upon it and the defendants, contained the following clause: "And inasmuch as we (the defendants) are urgently in want of money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest." The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the Stamp Laws, and refused to receive evidence to the contrary. He also refused to admit the bond in evidence. *Held*, on reference to the High Court, that the clause in question did not amount to an agreement to evade the Stamp Laws. The Judge might have inferred from it that it was the intention of the parties to evade the Stamp Laws, but in that case he should have heard evidence to the contrary. *SASHI BHUSAN BANERJEE v. TARACHAND KAR* - - - - - iii A. C. 329

5. — *Act X of 1862, s. 22—Promissory note—Interest.*] A promissory note is sufficiently stamped, if the stamp covers the principal sum named in the note, without reference to the interest. *GOMEZ v. YOUNG* - - - ii O. C. 165

STAMP—continued.

6. — *Promissory note—Admissibility in evidence.*] *A. B.*, by an instrument in writing, dated 6th August, promised to pay *C. D.*, "on demand," Rs. 4,310-13-3. In the margin of the instrument was written "due 30th August," and annexed to *A. B.*'s signature was the following memo.:—"The sum of Rs. 4,310-12-6 only, forty-five days from the 5th of August." *Held*, that the instrument was properly stamped as a promissory note payable on demand, and ought to have been admitted in evidence. *Per* PEACOCK, C. J.—A promissory note payable on demand ought to be stamped as such, notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time, or if paid on demand that the maker shall be entitled to discount. *CHANDRAKANT MOOKERJEE v. KARTIKCHARAN CHAILE* - - - - - v 103

7. — *Act X of 1862, s. 50, cl. 2—Jurisdiction of Collector—Offence under Criminal Procedure Code (Act XXV of 1861).* ss. 169, 171.] An application was made to a Collector under s. 50, cl. 2, Act X of 1862, to replace a damaged stamp by a new one. As it appeared that the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial. *Held*, that the document not having been given in evidence in any proceeding in Court, the Collector was not bound to proceed under ss. 169, 171 of the Criminal Procedure Code. *QUEEN v. GOUR MOHAN SEN* - - - - - iii A. Cr. 6

8. — *Act X of 1862, Sch. A, art. 43—Sanad to gomasta to collect rents.*] A sanad which authorizes a gomasta to collect rents, and to sue for them, requires to be stamped. Such a sanad requires a 4-rupee stamp under art. 43, Sch. A of Act X of 1862. *RAGHU NANDAN THAKUR v. RAMCHARAN KAPALI* - - - i F. B. 55

9. — *Act XXVI of 1867—Act X of 1859, s. 25, petition under.*] An application under s. 25, Act X of 1859, for the assistance of the Collector in ejecting a ryot, is not a suit; and therefore the Revenue Courts should receive such petitions engrossed on a stamp paper of the value of eight annas. *PYARI MOHAN MOOKERJEE v. KINA BEWA* - - - ii A. C. 236

10. — *Act XXVI of 1867, Sch. B, art. 11, note—Plaint.*] The object of the note to art. 11, Sch. B of Act XXVI of 1867 was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint. *COLLECTOR OF SYLHET v. KALI KUMAR DUTT* - - - - - vii F. B. 663
Contra, *MADHUSUDAN CHUCKERBUTTY v. RYMANI DAS* - - - - - vii 664 note

11. — *Application under Act VIII of 1859, s. 230.*] *A.* had been dispossessed of certain land, in execution of a decree, which *B.* had obtained in a suit against *C.* under s. 15, Act XIV of 1859. *A.* applied under s. 230, Act VIII of 1859, to recover the land. *Held*, no stamp was necessary on *A.*'s application. *BRAHMA MAYI DEBI v. BARKAT SIRDAR*, [iv F. B. 94]

STAMP—continued.

12. — *Plaint—Insufficient stamp.*] There is no illegality in the reception of a plaint engrossed on insufficient stamp paper, if the full amount of the stamp duty has been paid at the time. **GOBIND KUMAR CHOWDHRY v. HARGOPAL NAG** - - - - - iii Ap. 72

13. — *Act XVIII of 1869—Insufficiency of stamp.*] The Civil Court is authorized, under Act XVIII of 1869, to receive the proper amount of stamp which should have been affixed on a plaintiff's patta under the law in force when it was executed. **MAHOMED RIJAH v. COLLECTOR OF CHITTAGONG** - - - - - vi Ap. 117

14. — *Act XVIII of 1869, s. 28 — Promissory note — Admissibility in evidence.*] In a suit brought on the following document, dated 25th October, 1869:—"Whereas I, defendant, have borrowed Rs. 1,500 from you without interest without a bond, hence I declare that I shall repay, on or before 15th Falgun, the whole amount as one sum and take back this chitta: should I fail to repay the amount in question on the above date, I will pay interest on the same,"—it was objected that the document being unstamped under s. 3, Act X of 1862, the Stamp Act in force at the date of its execution, it was inadmissible in evidence; and it was contended for the plaintiff that it was admissible on payment of the penalty. The Judge applied s. 28, Act XVIII of 1869, and held he had no power to receive it on payment of the penalty. *Held*, the Judge was bound to comply with Act XVIII of 1869, and was therefore right in refusing to receive the document. *Held* also, the document was a promissory note within s. 28, Act XVIII of 1869. **NANDAN MISSEER v. CHATTER BATTI** - - - - - xiii Ap. 33

15. — *Act XVIII of 1869, Sch. I and Sch. II, cl. 2—Bond for payment of money.*] The plaintiffs drafted the following letter, dated 5th June, 1871, and sent it to the defendant for signature:—"I have this day sold to you 500 to 700 cases of first quality of hogs' lard of my manufacture and mark, at Rs. 43 per case of eight tins of ten seers each, or two bazar maunds nett, as usual, delivery to be given and taken in all twelve months, as it is prepared, by instalments of forty to sixty cases at a time from my manufactory, commencing from this day. Cash on delivery of each lot. I engage not to sell any hogs' lard to any party besides yourselves, nor to make any shipments during the term of this contract without first obtaining your consent in writing, or I will render myself liable to yourselves to a penalty of Rs. 5,000 by way of liquidated damages, without prejudice to your other rights. Should I fail to deliver the hogs' lard to you according to this contract, and should you fail to take delivery in any month of any of the instalments of hogs' lard when ready and after I have given you notice in writing, you must render yourselves similarly liable to a penalty

STAMP—continued.

of Rs. 5,000 as and by way of liquidated damages." This letter was signed by the defendant, and, as the plaintiffs alleged, formed the contract between them. The letter bore a stamp of one anna. In an action for a breach of the contract, it was tendered in evidence by the plaintiffs, and objection was taken to it that it was insufficiently stamped, that it required an *ad valorem* stamp as being a bond for the payment of money under Act XVIII of 1869, Sch. I. *Held*, it was a document which required an eight-anna stamp only under cl. 11 of Sch. II of the Act, and the document was admitted on payment of the stamp and penalty. **ROBERT AND CHARRIOL v. SHIREORE** - - - - - vii 510

16. — *Refund of stamp duty—Remand.*] *Held* by the majority of the Court (LOCH, J., dissenting, and CAMPBELL, J., doubting), where an appeal is remanded in part, the appellant is entitled to a return of a proportionate part of the stamp duty paid by him. In *THE MATTER OF THE PETITION OF DOORGA DASS DUTT* - - - - - Sup. Vol. 511
IN RE PROSUNNO CHUNDER ROY CHOWDRY,
[xi 372 note

17. — *Compromise pending appeal.*] No refund of stamp duty can be allowed when a suit is compromised pending the hearing of an appeal preferred. **LAND MORTGAGE BANK OF INDIA, v. MEHTUS** - - - iv Ap. 96
IN RE ABDUL HAMED CHOWDRY,
[iv Ap. 96 note

18. — *Refund of excess of stamp-duty—Court Fees Act (VII of 1870), ss. 13, 14, and 15.*] The plaintiff brought a suit for declaration of his maliki right over a certain patni tenure, and he alleged that the defendants had executed a hiba in his favor in consideration of a diamond ring worth Rs. 30,000. He valued his suit at Rs. 5,600, being twenty times the malikana of Rs. 280, to which the petitioner alleged he was entitled. The Subordinate Judge held that the plaintiff was bound to value his suit at Rs. 30,000, the consideration mentioned in the hibanama. The plaintiff paid the deficiency, and his suit was ultimately dismissed. The plaintiff appealed to the High Court, and valued his appeal at Rs. 5,600, which valuation was accepted by the High Court. On an application by the plaintiff for a certificate authorizing him to receive back from the Collector the excess of stamp-duty paid by him, *held*, that the Court had no power to grant it, its power being limited to cases specified in ss. 13, 14, and 15 of the Court Fees Act; but that there is nothing in the law preventing the Government from refunding any amount which they may think the plaintiff was improperly ordered to pay. In *THE MATTER OF THE PETITION OF ZOYNOODEEN HOSSEIN KHAN* - - - - - xi 370

STAMP FEES, RIGHT OF GOVERNMENT TO RECOVER.

See PAUPER SUIT.

STATUTE, CONSTRUCTION OF.*See* LIMITATION.MADRAS REGS. XXV AND XXXI
OF 1802.**STATUTE, PROMULGATION OF.***See* ONUS PROBANDI.**STATUTE OF FRAUDS.***See* EVIDENCE, PAROL EVIDENCE.

2. — 29 *Car. II.*, c. 3, s. 4 — 21 *Geo. III.*, c. 70, s. 17 — *Hindu defendant.*] The fourth section of the Statute of Frauds does not apply to suits in which the defendant is a Hindu. *NEKRAM JEMADAR v. ISWARIPRASAD PACHURI* — — v 643

3. — 29 *Car. II.*, c. 3, s. 4 — 21 *Geo. III.*, c. 70, s. 17 — *Contract of guarantee.*] A contract of guarantee is a "matter of contract and dealing" within the terms of s. 4 of 21 *Geo. III.*, c. 70, and therefore such a contract made by a Hindu is not affected by s. 4 of the Statute of Frauds. *JAGADAMBA DASI v. GROB.* [v 639]

STATUTE OF FRAUDS, SUFFICIENCY OF SIGNATURE UNDER.*See* CONTRACT.**STATUTE 43 ELIZ., c. 4.***See* WILL.

STATUTE 3 JAC. I, c. 7.] Statute 3 Jac. I, c. 7, has not been extended to India. *WILKINSON v. ABBAS SIKRAR* — — — iii O. C. 96

STATUTE 29 CAR. II, c. 3.*See* STATUTE OF FRAUDS.

—, c. 7.

See LORD'S DAY ACT.**STATUTE 31 CAR. II, c. 2.***See* HABEAS CORPUS.**STATUTE 8 ANNE, c. 14.***See* LANDLORD AND TENANT.**STATUTE 7 WILL. III, c. 3, s. 5.***See* WAGING WAR AGAINST THE QUEEN.**STATUTE 21 GEO. III, c. 70, s. 3.***See* MANDAMUS.

—, s. 17.

See GUARANTEE.

CONTRACT ACT, s. 27.

STATUTE OF FRAUDS.

STATUTE 56 GEO. III, c. 100.*See* HABEAS CORPUS.**STATUTE 4 GEO. IV, c. 81.***See* JURISDICTION OF CRIMINAL COURT.**STATUTE 2 & 3 WILL. IV, c. 71.***See* PRESCRIPTION.**STATUTE 7 WILL. IV AND 1 VICT., c. 85, s. 2.***See* OFFENCE COMMITTED ON THE HIGH SEAS.**STATUTE 1 VICT., c. 26, s. 9.***See* WILL.**STATUTE 5 & 6 VICT., c. 100.***See* COPYRIGHT OF ORNAMENTAL DESIGN.**STATUTE 6 & 7 VICT., c. 65.***See* COPYRIGHT OF ORNAMENTAL DESIGN.**STATUTE 11 & 12 VICT., c. 21.***See* INSOLVENCY.

INSOLVENT ACT.

STATUTE 13 & 14 VICT., c. 104.*See* COPYRIGHT OF ORNAMENTAL DESIGN.**STATUTE 14 & 15 VICT., c. 19, s. 5.***See* OFFENCE COMMITTED ON THE HIGH SEAS.**STATUTE 21 & 22 VICT., c. 70.***See* COPYRIGHT OF ORNAMENTAL DESIGN.**STATUTE 24 VICT., c. 10.***See* JURISDICTION, ADMIRALTY.**STATUTE 24 & 25 VICT., c. 67.***See* INDIAN COUNCILS' ACT.
JURISDICTION OF CRIMINAL COURT.

—, c. 104, s. 9.

See JURISDICTION OF CIVIL COURT.

—, s. 15.

See APPEAL TO PRIVY COUNCIL.
LAND ACQUISITION ACT.
REVIEW.

SUPERINTENDENCE OF HIGH COURT.

STATUTE 26 VICT., c. 24.*See* JURISDICTION, ADMIRALTY.**STATUTE 30 & 31 VICT., c. 13, s. 99.***See* SMALL CAUSE COURT, MOFUSSIL.**STATUTE 32 & 33 VICT., c. 71.***See* INSOLVENT ACT, s. 40.**STATUTORY POWERS.***See* RAILWAY COMPANY.
ZEMINDAR, DUTY OF.**STRIDHAN.***See* HINDU LAW, STRIDHAN.**STRIKING OFF EXECUTION PROCEEDINGS.***See* ATTACHMENT.LIMITATION ACT XIV OF 1859,
s. 20.**SUBDIVISION OF DISTRICT.***See* BENG. ACT VI OF 1862, s. 19.**SUBORDINATE JUDGE.***See* BENG. ACT VIII OF 1869, s. 102.

SUBSISTENCE MONEY — *Act VIII of 1859 ss. 276, 278—Discharge of debtor.*] A prisoner was arrested on August 4th, and committed to prison on the evening of the same day. Before his committal, the execution-creditor paid into the hands of the jailor a sum sufficient for his subsistence-money for 27 days, at the established rate of 4 annas per day. On the 5th August, a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th a further sum of 4 annas was paid to the jailor to cover any deficiency in the former payment. *Held*, that the requirements of s. 276, Act VIII of 1859, had not been fulfilled, and that the prisoner was

SUBSISTENCE MONEY—continued.

entitled to his discharge under s. 278. *DUTT v. CORNELIUS* - - - - - v Ap. 79

2. — On the 30th of September, the plaintiff, a detaining creditor, paid to the jailor of the Calcutta jail subsistence-money for 30 days, for a prisoner confined at the suit of the plaintiff, the jailor then having a balance of 4 annas over from the subsistence-money for September. *Held*, a sufficient compliance with s. 276 of Act VIII of 1859. *HALADHAR DEY v. AMBIKA CHARAN BOSE* - - - v Ap. 80

SUCCESSION.

See HINDU LAW, INHERITANCE.

SUCCESSION, DEED ALTERING COURSE OF, BY HINDU LAW.

See COMPROMISE.

SUCCESSION ACT, ss. 2 and 3—Minor.] The definitions of 'minor' and 'minority' in the Indian Succession Act do not apply to cases in which a person enters into a contract on his own behalf, and not in any representative character under that Act. *SULTAN CHAND v. SMYTH* - - - - - xii 358

—, s. 4.

See DIVORCE ACT, s. 35.

HUSBAND AND WIFE.

2. — *Married woman, liability of—Separate estate—Restraint on anticipation—Husband and wife—Married Women's Property Act (III of 1874), s. 8.]* In a suit against a husband and wife, and the trustees of the wife's marriage settlement, on two joint and several promissory notes given by the husband and wife after their marriage, but before the passing of the Married Women's Property Act (III of 1874), the plaintiff sought to render liable property settled on the marriage upon the wife for her separate use without power of anticipation. The marriage was contracted after the passing of the Indian Succession Act. *Held*, that s. 4 of that Act did not prevent the operation of the clause in the marriage settlement in restraint of anticipation. *Held* further, that s. 8 of the Married Women's Property Act, 1874 does not apply to contracts made before the passing of the Act. *Semble per COUCH, C.J.*—If the contract had been made after that Act came into operation, the plaintiff would have had a remedy against the wife's separate estate notwithstanding the clause restraining anticipation. *PETERS v. MANUK* - - - - - xiii 383

—, s. 50.

See WILL.

—, s. 180.

See PROBATE.

—, s. 182.

See PROBATE.

—, ss. 212, 213.

See LETTERS OF ADMINISTRATION.

—, s. 224.

See ILLEGITIMACY.

SUCCESSION ACT—continued.

—, s. 237 — *Exemplification of will — Probate—Order to produce testamentary paper.]* The testator died in Calcutta, leaving a will, whereof he appointed A., B., C., & D., executors. D., the mother of the testator, had carried on business in partnership with the testator in Calcutta, and a considerable portion of the testator's estate was in India. A. renounced probate, and the will was proved in England by B. & C., who sent their agents in Calcutta an exemplification of the will for the purpose of obtaining a grant of probate or letters of administration to the estate in India. In an application by D. for an order directing the agents to bring the exemplification into Court with a view to obtaining probate thereof,—*held*, that the exemplification was an instrument which the Court would order to be produced under s. 237, Indian Succession Act. *IN RE THE GOODS OF NEWTON* - - - - - viii Ap. 76

—, s. 242.

See PROBATE.

—, s. 282 — *Decree, satisfaction of — Executor—Administrator.]* Where a person obtains a decree against an executor or administrator, he is entitled to have his decree satisfied out of the assets of the deceased, and s. 282 of the Indian Succession Act does not interfere with that right. *NILKOMUL SHAW v. REED* - - - - - xii 287

—, s. 331.

See WILL.

SUCCESSION TO RAJ.

See HINDU LAW, CUSTOM.

JUDGMENT IN REM.

SUCCESSIVE MINORITIES.

See LIMITATION REG. III OF 1793.

SUDRAS.

*See HINDU LAW, ADOPTION.
HINDU LAW, MARRIAGE.*

SUIT.

See ACT X OF 1859, SS. 28 AND 145.

SUIT AGAINST JUSTICES FOR DAMAGE IN REPAIRING DRAINS.

See BENG. ACT VI OF 1863.

SUIT AGAINST MUNICIPAL COMMISSIONERS FOR POSSESSION OF LAND.

See BENG. ACT III OF 1864.

SUIT BY DECREE-HOLDER TO DECLARE PROPERTY LIABLE TO ATTACHMENT.

See LIMITATION ACT XIV OF 1859, s. 20.

SUIT FOR BALANCE OF ACCOUNT BY ZEMINDAR AGAINST MANAGER OF TWO ESTATES.

See CAUSE OF ACTION.

SUIT FOR DECLARATION OF RIGHT TO SHARE IN THE PRODUCE OF TREES.

See JURISDICTION OF CIVIL COURT.

SUIT FOR DECLARATION OF TRUSTS OF A TEMPLE.

See ACT XX OF 1863.

SUIT FOR LAND.

See CIVIL PROCEDURE CODE, s. 5.
LETTERS PATENT, CL. 12.

SUIT FOR POSSESSION ON DECLARATION OF TITLE.

See JURISDICTION OF CIVIL COURT.

SUIT FOR SHARE OF FEES RECEIVED BY HINDU PRIEST.

See JURISDICTION OF CIVIL COURT.

SUIT FOR SHARE OF A DEBT.

See PARTIES.

SUIT FOR TURN OF WORSHIP OF IDOL.

See LIMITATION ACT XIV OF 1859,
s. 1, CL. 16.

SUIT IN PERSONAM.

See LETTERS PATENT, CL. 12.

SUIT ON BEHALF OF A DECEASED LUNATIC'S ESTATE—*Manager appointed by Court of Wards—Parties.*] One *L.*, in December, 1867, undertook by a security bond to be answerable to the Court of Wards for any default in the payment of rent which might be made by *S.* in performing the stipulation of a certain lease made to *S. M.*, described as manager under the Court of Wards of the estate of *B.*, a lunatic, deceased, brought a suit on the bond against *S.* and his brother. *Held*, the defendants were not liable. The suit was not properly framed. The suit should have been brought, as to arrears accruing due during the lifetime of *B.*, by his personal representative; and as to arrears accruing due after *B.*'s death, by the successor of *B. M.* not being in either position was not entitled to sue. *MAHOMED ABDUL HYE v. LUNJEET SINGH* - - - - - xiii Ap. 14

SUIT ON DECREE OF SMALL CAUSE COURT.

See COSTS.

2. — In a suit to recover Rs. 777, due on a decree of the Small Cause Court, which decree had been obtained by the plaintiff against the defendant as executor of the estate of one *R.*, deceased, the defendant had appeared in the Small Cause Court and had denied assets of the deceased, and the decree was wholly unsatisfied as appeared from the certificate of the First Judge. The plaintiff proved by the evidence of the defendant himself that he was in possession of immovable property of the deceased out of which the decree could be satisfied. The plaintiff prayed that the defendant, as executor, might be ordered to pay the amount with interest and costs, and if he should deny assets, then for administration of the estate of the deceased. The defendant did not enter appearance. The Court granted a decree for the amount with interest and costs No. 1; in default of payment for six months from date of decree the estate to be administered in due course. *MODOOBOODUN PAUL v. DOYAL CHAND MULLICK* - - - - - x Ap. 35

SUIT TO CLOSE DOORS OR WINDOWS.

See JURISDICTION OF CIVIL COURT.
TRESPASS.

SUIT TO CLOSE NEW ROAD AND OPEN OLD ONE.

See JURISDICTION OF CIVIL COURT
ONUS PROBANDI.

SUIT TO EJECT RYOTS.

See JURISDICTION OF CIVIL COURT.

SUIT TO RECOVER MONEY PAID BY MORTGAGEE TO PREVENT SALE.

See MONEY HAD AND RECEIVED.

SUIT TO SET ASIDE DEED.

See COURT FEES ACT.

DECLARATORY DECREE, SUIT FOR.

SUIT UNDER Rs. 500.

See BILLS OF EXCHANGE ACT.

SUMMARY DECISION.

See LIMITATION ACT XIV OF 1859,
s. 22.

SUMMARY PROCEDURE.

See ACT XL OF 1858.

BILLS OF EXCHANGE ACT.

SUMMARY SUIT, INEFFECTUAL PROCEEDINGS IN.

See LIMITATION REG. VII OF 1799.

SUMMARY SUIT, SUIT TO ENFORCE DECREE IN.

See JURISDICTION OF CIVIL COURT.

SUMMARY TRIAL, APPEAL FROM.

See CRIMINAL PROCEDURE ACT (X OF 1872) ss. 222, 230.

SUMMING UP EVIDENCE.

See CHARGE TO JURY.
ASSESSORS.

SUMMONS.

See SERVICE OF SUMMONS.
WITNESSES.

2. — *Grant of second summons—Discretion of Judge—Practice—Rule 12 of High Court Rules, 1st May, 1875—Laches.*] A Judge has, under Rule 12 of the Rules of 1st May, 1875, discretion as to granting a second summons, and is bound to enquire into the circumstances under which it is applied for; and when there has been great and unexplained laches, he should refuse it. Unless such discretion is clearly shown to have been improperly exercised, the Court will not interfere on appeal; but, under the circumstances of this case, the Court on appeal, finding there was no definite rule of practice as to the time within which a second summons might be applied for, allowed a second summons to issue. *GOURCHURN SOOR v. PEARY LALL PAUL* - - - - - xv Ap. 12

SUMMONS BOOK OF SMALL CAUSE COURT.

See EVIDENCE, CIVIL CASES.

SUMMONS TO ATTEND TAXATION.

See TAXATION OF BILL OF COSTS.

SUNDAY, TIME EXPIRING ON.

See LIMITATION.
REVIEW.

SUNDAY, TRIAL ON.

See HOLIDAY.

SUNDERBUNS BOUNDARY—*Reg. III of 1828, s. 13.*] S. 13, Reg. III of 1828, was intended to make provision for the immediate settlement of the limits of the Sunderbuns; hence it fixed peremptorily a period after which the demarcation of those limits, made

SUNDERBUNS BOUNDARY—continued.

by the Special Commissioner to that end appointed, should be final. No person can come in after that period (namely, three months from the date of the Commissioner's proceeding fixing boundary) pleading infancy or other ground for re-opening the question of boundary, since the geographical boundary line was necessarily to be one and the same for all the world. Even within the period of limitation allowed, no one could be heard to object to the line, unless he declared and offered proof that at the time of the survey he was in the occupation of a definite quantity of land cleared and under cultivation within the line. After the line had once become final, no party could be heard to say that even cultivated lands within it were part of his settled zemindary. **BARADAKANT ROY v. THE COMMISSIONER OF THE SUNDERBUNS** - ii P.C. 33

SUPERINTENDENCE OF HIGH COURT.

See ACT XXIII OF 1861, s. 35.

BOND.**LAND ACQUISITION ACT.**

2. — 24 and 25 Vict., c. 104, s. 15—*Execution proceedings—Refusal of party to attend as witness.*] A Principal Sudder Ameen ordered the attendance as a witness of a person seeking by his vakeel to enforce the execution of a decree, and on his refusal to attend, sent him to the Magistrate. On an application to have the order set aside, a Division Bench of the High Court was of opinion that, under the circumstances, the order of the Principal Sudder Ameen was arbitrary, vexatious, and unnecessary; but being doubtful, in the absence of any provision in the Civil Procedure Code, of its powers of interference under the Charter, referred the point to a Full Bench. *Held*, that the Principal Sudder Ameen had power to make the order, and that the High Court ought not to interfere with it. **IN THE MATTER OF THE PETITION OF JANKEE BULLUB SEN** - - - - - Sup. Vol. 716

3. — 24 and 25 Vict., c. 140, s. 15—*Remedy by regular suit.*] S. was adjudicated an insolvent in the Insolvent Court, Calcutta. R. thereupon deposited in the Court at Shahabad a sum for which S. had obtained a decree against him. This decree had been attached by T. under a decree obtained by him against S., and they applied to the Shahabad Court for satisfaction of their decree out of the money deposited by R. The Official Assignee opposed the application, which was granted. The Official Assignee petitioned the High Court to interfere under s. 15, 24 and 25 Vict., c. 104, but the Court refused to interfere, on the ground that there was a remedy by suit for injunction and application for a preliminary order under s. 92, Act VIII of 1859. **IN RE MILLER**,
[iv A. C. 73 note

4. — 24 and 25 Vict., c. 140, s. 15—*Court acting without jurisdiction—Error in law.*] The interference of the High Court under s. 15, 24 and 25 Vict., c. 104, should be confined to cases in which the lower Court has acted

SUPERINTENDENCE OF HIGH COURT—contd.

without jurisdiction, or has improperly declined jurisdiction, and should not be extended to cases in which the Court, though competent in respect of the subject-matter, has misconceived the law in deciding a case. **IN RE KASINATH ROY CHOWDREY** - - vii 146 note

5. — *Denial of jurisdiction—Act X of 1859, s. 77.*] A. sued B., a ryot, for arrears of rent. C. was added as a party under s. 77, Act X of 1859. The Collector in appeal refused to try C.'s claim under s. 77, because she had not produced her title-deeds. *Held*, that the refusal to try C.'s claim by the Collector was a denial of jurisdiction on his part, and the High Court sent back the case to the Collector for trial of C.'s claim. **IN THE MATTER OF THE PETITION OF NASSIR JAN**,
[vii 144

6. — 24 and 25 Vict., c. 104, s. 15—*Order by Judge of High Court in its Original Criminal Jurisdiction.*] Where an application was made to the Judge sitting on the Original Side of the High Court to transfer a case from Patna in the exercise of the extraordinary jurisdiction of the High Court, and the application was adjourned, and an order made calling on the Government to show cause why it should not be removed, the High Court on the Appellate Side, on a petition setting forth that the order was without jurisdiction, as the rules of the High Court had appointed a particular Bench to hear cases from Patna, refused to interfere. **IN RE GOVERNMENT OF BENGAL; QUEEN v. AMEER KHAN** - - - - - vii 244 note

7. — A Judge of the High Court, making an order in the Original Criminal Jurisdiction of the Court, is not a Court subject to the control of the High Court under s. 15, 24 and 25 Vict., c. 104. **IN RE GOVERNMENT OF BENGAL; QUEEN v. AMEER KHAN** - - - - - vii 250 note

8. — 24 and 25 Vict., c. 104, s. 15—*Recorder of Moulmein—Act XXI of 1863, ss. 16 and 17—Suspension of pleader.*] The High Court has, under s. 15 of 24 and 25 Vict., c. 104, general superintendence over the Court of the Recorder of Moulmein, established under Act XXI of 1863. An order passed by the Recorder of Moulmein under s. 16 or 17 of Act XXI of 1863, granting or withdrawing a licence to practise as a pleader in the Small Cause Courts of Moulmein, is an exercise of power which comes under the superintendence of the High Court. **IN THE MATTER OF THOMSON**,
[vi 180

9. — 24 and 25 Vict., c. 104, s. 15—*Refusal of order of confirmation of sale—Error in law.*] A certified purchaser of property sold in execution of a decree applied to the Judge for an order of confirmation of sale, and was refused. *Held*, that the High Court had no power to interfere with the Judge's decision, even though erroneous on a point of law, upon a matter entirely within his jurisdiction, and from which there is no appeal. **IN THE MATTER OF THE PETITION OF DURGA CHARAN SIKHAR**,
[ii A. C. 166

SUPERINTENDENCE OF HIGH COURT—*contd.*

10. — 24 and 25 Vict., c. 104, s. 15—*Review, admission of, after prescribed time.*] The High Court refused to interfere with the order of a Court granting a review of its judgment, although the application for review was not made until three years after the date of the decree, the party who preferred the application for the review having satisfied such lower Court of the existence of just and reasonable cause for his not having preferred his application for review within ninety days. *AJONNISSA BIBEE v. SURJA KANT ACHARJI* ii A. C. 181

11. — The lower Appellate Court admitted a petition for review of its judgment after a lapse of ninety days from the date of the decision without recording that just and reasonable cause for the delay had been shown. On an application under s. 15 of the Charter Act to the High Court to set aside the order of the lower Court, on the ground that that Court had no jurisdiction to entertain an application for review after a lapse of ninety days without recording that there was just and reasonable cause for the delay, the High Court refused to interfere. *ASRAFANNISSA BEGUM v. SYAD INABT HOSSEIN* - - - v 816

12. — 24 and 25 Vict., c. 104, s. 15—*claim, order on.*] A claim was disallowed to certain property which had been attached in execution of a decree. The property was sold; and after satisfaction of the decree, it was ordered that the surplus proceeds should be rateably distributed among other judgment-creditors who had subsequently attached. On the application of the unsuccessful claimant again preferring his claim to the property, the Principal Sudder Ameen made another order, setting aside the previous order for distribution so far as it affected some of the creditors. Held, that the Principal Sudder Ameen had no jurisdiction to make the latter order. The High Court would, therefore, interfere to set it aside under its general power of superintendence. *IN THE MATTER OF THE PETITION OF DHIRAJ MAHTAB CHAND BAHADUR*, [ii A. C. 217]

13. — 24 and 25 Vict., c. 104, s. 15.—*Act VIII of 1859, s. 230.*] Whether or not an appeal lies from the decision of a lower Court rejecting an application by a party other than a defendant, under s. 230, Act VIII of 1859, disputing the right of the decree-holder to dispossess him, the High Court may, under the 15th section of the Charter, compel the lower Court to exercise its jurisdiction. *Golucknarain Dutt v. Bistooprea Dossee*, 1 W. R. 140, referred to and questioned. *COLLECTOR OF BOGRA v. KRISHNA INDRA ROY*, ii A. C. 801

14. — *Revival of suit—Act X of 1859, ss. 54, 55, and 58.*] A suit for arrears of rent was dismissed by the Deputy Collector for default under s. 54, Act X of 1859. Thereupon a fresh suit was brought by the same plaintiff for the recovery of the said arrears, and a decree was obtained. On appeal, the Judge reversed the decision of the Deputy Collector, and

SUPERINTENDENCE OF HIGH COURT—*contd.*

dismissed the suit. The plaintiff then applied under s. 58, Act X of 1859, for revival of the former suit, but the Deputy Collector rejected the application. On appeal, the Judge held that the suit might be revived, and remanded the case for trial. The High Court, under its general power of superintendence, set aside the order of the Judge as passed without jurisdiction, holding that, although the Deputy Collector had formerly struck off the case under s. 54, yet it was in fact an order under s. 55, and therefore under s. 58, Act X of 1859, no appeal lay to the Judge. *MIR HABIB SOBHAN v. MAHENDRA NATH ROY* - ii Ap. 32

15. — *Appeal, delay in filing—Act X of 1859, s. 25.*] The High Court, under its general power of superintendence, set aside an order of a lower Appellate Court admitting an appeal filed beyond time, on the ground that the lower Appellate Court had no jurisdiction to entertain an appeal passed by the Collector under s. 25, Act X of 1859. *AMBA NASHYA v. GAGAN SHUTAR* - - - ii Ap. 35

16. — 24 and 25 Vict., c. 104, s. 15—*Order of Collector giving possession, reversal of.*] Where a Collector, having passed an order for possession of a certain tenure in favor of the applicant on his purchase thereof at a sale for arrears, reversed such order at the instance of an objector who had already purchased the same at a sale under Beng. Act VIII of 1865, for arrears of rent due upon it, and had been put in possession, the High Court refused to exercise its powers under s. 15 of the Charter Act. *NARAYANI DAYI DEBI v. CHANDI CHARAN CHOWDHRY* - - - iii Ap. 65

17. — 24 and 25 Vict., c. 104, s. 15—*Refusal to entertain suit by Court from which there is an appeal.*] When a Court, subject to the appellate jurisdiction of the High Court, refuses to entertain a suit over which it has jurisdiction, the High Court may, under its general power of superintendence, order the Court below to entertain such suit, notwithstanding that no appeal would lie to the High Court from the decree in such suit. *HARDAYAL MANDAL v. TIRTHANAND THAKUR* iv Ap. 28

18. — 24 and 25 Vict., c. 104, s. 15 — *Refusal of original Court to entertain application for review—Refusal of leave to sue in formâ pauperis.*] Under s. 15 of 24 and 25 Vict., c. 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain an application to review an order refusing a petition for leave to sue in formâ pauperis, on the ground that the Court had no jurisdiction to entertain it. *IN THE MATTER OF THE PETITION OF UMASUNDARI DEBI* - - v Ap. 29

19. — *Interference by High Court in case cognizable by Small Cause Court—Act XXIII of 1861, s. 27.*] In a suit cognizable by the Small Cause Court, and in which no special appeal lies to the High Court under s. 27, Act XXIII of 1861, the High Court exercised

SUPERINTENDENCE OF HIGH COURT—contd.

its extraordinary powers and dismissed the suit. **DHIRAJ MAHTAB CHUND BAHADUR v. SHAGOR KUNDU** - - - - v Ap. 91

20. — 24 and 25 Vict., c. 104, s. 15—*Act VIII of 1859, s. 119—Ex parte decree*.] Judgment was passed *ex parte* against a defendant who had not appeared. The defendant failed to show cause for setting aside the judgment under s. 119 of Act VIII of 1859. He now applied to the High Court under s. 15 of 24 and 25 Vict., c. 104, to set aside a portion of the decree as having been passed without jurisdiction. The Court refused to interfere. **IN THE MATTER OF THE PETITION OF LESLIE** - - - - x 68

21. — *Act V of 1861, s. 17—Order of executive nature.*] The High Court, while considering that an order by a Magistrate professing to act under s. 17 of Act V of 1861 was illegal, refused to interfere, on the ground that the order was one of an executive nature. **IN THE MATTER OF THE PETITION OF ROHMAN SIKAR** - - - - x Ap. 4

22. — 24 & 25 Vict., c. 104, s. 15—*Circumstances disentitling party to relief.*] A party applying to the High Court for relief under s. 15 of 24 and 25 Vict., c. 104, must clearly show that he has not contributed by his own conduct to his being placed in the position he finds himself in. A decree for possession with *wasilat* of certain lands appertaining to an indigo concern was obtained in a suit against D. as manager on behalf of G. M. & Co., the proprietors of the concern, although no member of G. M. & Co. was living when the suit was instituted. In execution of this decree the plaintiff obtained possession of the lands. The executors of M., the last surviving member of G. M. & Co., having subsequently assigned the concern to A., who also took upon himself the *dena-paona*, the plaintiff applied under s. 210 to execute the decree against A. in respect of *wasilat*; and two successive notices under s. 216 were issued to A. to show cause why the decree should not be executed against him. A. being advised that the suit was a nullity, and that, under no circumstances, could execution be had against him as heir or legal representative of any of the judgment-debtors, neglected to appear, and certain property belonging to him was sold in execution of the decree without opposition on his part, and the sale having been duly confirmed, the purchaser, who was also the decree-holder, was put into possession. A. thereupon applied to the Court executing the decree to have the sale set aside, and his application being refused, petitioned the High Court under s. 15 of 24 and 25 Vict., c. 104, for the same relief. The High Court, however, refused to interfere both upon the principle above stated, and likewise because the purchaser, being also the decree-holder, could not successfully oppose a suit by A. to have the sale set aside. **IN THE MATTER OF THE PETITION OF COCHRANE** - - - - xiv 330

23. — 24 and 25 Vict., c. 104, s. 15.—*Claim over-valued for purpose of giving jurisdiction.*] The plaintiff brought a suit in the Court of the

SUPERINTENDENCE OF HIGH COURT—contd.

Subordinate Judge of Dacca, under s. 15, Act XIV of 1859. The defendant pleaded that the Judge had no jurisdiction, inasmuch as if the suit had been properly valued, it was one cognizable by the Munsif. The Judge found that the value of the property did not exceed Rs. 500, and that the plaintiff had over-estimated the value of the claim in order to exceed the jurisdiction, but instead of returning the plaint, he proceeded to try the case on its merits, and dismissed the suit. On an application on behalf of the plaintiff to set aside the judgment as passed without jurisdiction, the High Court refused to interfere under s. 15 of 24 and 25 Vict., c. 104. **IN THE MATTER OF THE PETITION OF WISE** - - - - x Ap. 20

24. — *Suit brought in wrong Court.*] The plaintiff brought a suit, which was cognizable by a Small Cause Court, in a Munsif's Court having jurisdiction within the local limits of the jurisdiction of the Small Cause Court. He obtained a decree, but the decree was reversed on appeal. On special appeal the Court, though holding that no special appeal would lie, set aside the decrees of both the lower Courts as having been passed without jurisdiction. **TARINI CHARAN MOOKERJEE v. PURNA CHANDRA ROY** - - - - vi 717

25. — 24 and 25 Vict., c. 104, s. 15—*Want of jurisdiction—Act VIII of 1859, s. 246, order under.*] In a case decided by the Munsif, in which it was found by the High Court that there was no appeal to the Judge, the Judge's order was set aside as passed without jurisdiction, and the Munsif's order was also set aside as not having been passed under s. 246, Act VIII of 1859, under which section the objection had been preferred. **HARIS CHANDRA GUPTO v. SHASHI MALA GUPTI** - - - - vi 721

26. — Where an order was made by a Munsif under s. 246 of Act VIII of 1859, and a regular appeal was preferred, and then a special appeal to the High Court, that Court, while refusing to entertain the appeal on the ground that the Munsif's order was final, or to set aside the order under s. 15 of 24 and 25 Vict., c. 104, expressed an opinion that the order was contrary to law, and left it to the Munsif to act upon such opinion. **KALI CHARAN GIR GOSSAIN v. BANGSHI MOHAN DAS,** [vi 727]

27. — 24 and 25 Vict., c. 104, s. 15—*Order of remand—Criminal Procedure Code (Act XXV of 1861), s. 224.*] Where a Magistrate had adjourned an enquiry for a cause not contemplated by s. 224 of the Criminal Procedure Code, the High Court, in exercise of the power of superintendence conferred by s. 15 of 24 and 25 Vict., c. 104, set aside the order of remand. **IN THE MATTER OF THE PETITION OF MATTHURANATH CHUCKERBUTTY** - - - - ix 354

28. — 24 and 25 Vict., c. 104, s. 15—*Beng. Act VIII of 1869, s. 102.*] The Court held that in a suit for rent even if no appeal lay under s. 102, Beng. Act VIII of 1869, the Court on special appeal could interfere under s. 15 of

SUPERINTENDENCE OF HIGH COURT—contd.

Act 24 and 25 Vict., c. 104. On appeal under the Letters Patent, *held*, that the power conferred by that section ought not to be exercised in such a way as to do indirectly that which the law forbids to be done directly. **KARIM SHEIKH v. MUKHODA SOONDERY DASSEE**, [xv 111]

29. — 24 and 25 Vict., c. 104—*Land Acquisition Act (X of 1870)*.] The Courts established under Act X of 1870 are subject to the appellate jurisdiction of the High Court, and not the less so because an appeal lies to the High Court from their decisions in certain cases only. The High Court consequently has the power of superintendence over those Courts under s. 15 of the Charter Act. **IN THE MATTER OF THE PETITION OF ABDUL ALI** — — — — — xv 197

30. — 24 and 25 Vict., c. 104, s. 15—*Act VIII of 1859, s. 364—Reversal of sale for inadequacy of price.*] Certain Bank shares, the property of a judgment-debtor, were sold in execution of decree. The Sudder Ameen afterwards reversed the sale on the ground of the inadequacy of the price. The Judge having refused to entertain an appeal, the purchaser applied to the High Court. *Held*, the parties being precluded from appealing by s. 364 of Act VIII of 1859, the High Court had no power to grant relief. **IN THE MATTER OF THE PETITION OF DACOSTA** — — — — — Sup. Vol. 432

31. — 24 and 25 Vict., c. 104, s. 15—*Act X of 1859, s. 151—Execution proceedings.*] Where a Deputy Collector refused to entertain an application by a defendant for realization of costs awarded by a Court of appeal, and for refund of the amount which the plaintiff had realized from the defendant in execution of the decree of the lower Court, but which had been disallowed by the Court of appeal, and where, on appeal, the Judge held that no appeal lay under s. 151 of Act X of 1859,—*held*, that the High Court had power, under 24 and 25 Vict., c. 104, s. 15, to order the Deputy Collector to enforce restitution of the amount realized from the defendant in excess of the amount allowed by the Court of appeal, and also to execute that part of the decree which awarded costs to the defendant. **IN THE MATTER OF THE PETITION OF GOBIND KOOMAR CHOWDHY**, Sup. Vol. 714

SUPERSTITIOUS USES, REQUEST FOR.

See WILL.

SURETY.

See PRINCIPAL AND SURETY.

2. — *Suit by surety—Cause of action—Limitation.*] The plaintiff executed a bond jointly with a servant of the defendant's on 10th July, 1861. The proceeds were expended for the defendant on the 30th August, 1864. The creditor obtained a decree upon the bond for principal and interest, which the plaintiff satisfied by two payments made on 4th July, 1866, and 30th June, 1868, respectively. He brought a suit against the defendant for the amount on 22nd June, 1869. *Held*, that the plaintiff could maintain his suit against the

SURETY—continued.

defendant for the amount paid by him, and that the suit was not barred by the law of limitation. **BHAGIRATH ADHIKARI v. TARINI CHANDRA PAKRASI** — — — — — vii 35

3. — *Forfeiture of recognizances—Attachment of property of surety for accused person—Illegal order.*] A surety who was bail for an accused person having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail-bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, first, of the accused, and, secondly, of the surety. No recognizance had been signed by the accused, and no notice had been given to the surety to show cause. On a reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal. **QUEEN v. DURGA DAS BHUTTACHARJEE**, [vii Ap. 37]

4. — *Suit against surety of Nazir by party whose property has been misappropriated by Nazir.*] The surety of a Nazir who had entered into the usual bond of indemnity with the Collector of the district against all losses caused by the Nazir during the tenure of his office, was held not liable, at the suit of a person whose property had been misappropriated by the Nazir, to make good any loss sustained by such person. **BOCHA GOPH CHOWDHRY v. BRAJAGABIND DAS** ix Ap. 26

SURETY-BOND, ENFORCEMENT OF.

See ACT XXIII OF 1861, s. 8.

SURETY, LIABILITY OF.

See BOND.

SURETY OF DEFAULTING TENANT, SUIT AGAINST.

See RES-JUDICATA.

SURETY, STAY OF EXECUTION AGAINST.

See CIVIL PROCEDURE CODE, s. 204.

SURETY, SUIT BY, AGAINST PRINCIPAL FOR MONEY PAID ON HIS ACCOUNT.

See SMALL CAUSE COURT, MOFUSSIL

SURVEY AWARD.

See CIVIL PROCEDURE CODE, s. 14.

LIMITATION ACT XIV OF 1859, s. 1, CL. 6.

SURVEY MAP, SUIT FOR LANDS WRONGLY MARKED ON.

See DECLARATORY DECREE, SUIT FOR.

SURVIVORSHIP.

See HINDU LAW, INHERITANCE.
HINDU LAW, JOINT FAMILY.

TACKING.

See MORTGAGE.

TALABANA.

See ACT XXIII OF 1861, s. 2.

TALABANA, FAILURE TO DEPOSIT.

See APPEAL.

TANK, ORDER TO DESTROY.

See NUISANCE.

TANKS, MAINTAINING ANCIENT.

See ZEMINDAR, DUTY OF.

TAXATION OF BILL OF COSTS—Attorney—Attendance before Taxing Officer—Appearance for several parties—Summons to attend taxation—Practice.] Any work which an attorney does jointly for several parties together, he can only make one charge for, and where he appears for any number of parties before the Taxing Officer at the taxation of the costs of a suit, he must be taken to represent them jointly. The Taxing Officer should not issue separate summonses to different parties who appear by one attorney. *KENNY v. ADMINISTRATOR-GENERAL OF BENGAL* - - - vii Ap. 50

TAZI MANDI CHITTIS—Principal and agent—Gambling Act (XXI of 1848).] Where the plaintiff had expended money at the request of the defendant in the purchase or settlement of Tazi Mandi Chittis,—*held*, he was entitled to recover notwithstanding Act XXI of 1848. *KANAYALAL v. CHAGMAL BATTIA* - viii 412
BHAIRABNATH KHETTRI v. JUMANRAM DHANDARIA - - - viii 415 note
TEHSILDAR.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 2.

TEMPLE, SUIT FOR DECLARATION OF TRUSTS OF.

See ACT XX OF 1863.

TENANCY, ACKNOWLEDGMENT OF.

See LANDLORD AND TENANT.

TENANCY, DETERMINATION OF.

See LANDLORD AND TENANT.

TENANT-AT-WILL.

See LANDLORD AND TENANT.

TENDER.

See BENG. ACT VI OF 1862, s. 4.

TENURE CREATED UNDER COURT OF WARDS.

See BENG. ACT IV OF 1870.

TERRITORIAL LAW OF BRITISH INDIA.] The territorial law of British India is a modified form of English law. *SECRETARY OF STATE v. ADMINISTRATOR-GENERAL OF BENGAL* - - - - - i O. C. 87

THAKBUST AWARD—Reg. IX of 1825—Act XIII of 1848—Evidence of possession.] A thakbust award of boundary made in the Lower Provinces may be an award, under Reg. IX of 1815, within the meaning of Act XIII of 1848. It would in any case be material evidence of possession. *PRAHLAD SEN v. RAJENDRA KISHOR SING* - - - - - ii P. C. 111

THEFT.

See PARTNERSHIP PROPERTY. CHARGE.

TIME FOR APPEARANCE, EXTENSION OF.

See BILLS OF EXCHANGE ACT.

TITLE.

See CHUR LANDS.

CIVIL PROCEDURE CODE, s. 230; s. 246.

ESTOPPEL.

ONUS PROBANDI.

PARTITION.

POSSESSION.

VENDOR AND PURCHASER.

TITLE—continued.

2. — *Oral evidence.*] Where the Principal Sudder Ameen, reversing the decision of the Munsif, dismissed a claim to the possession of certain land, on the ground that "mere oral evidence unsupported by any documentary evidence was not admissible to establish a man's title to landed property," the High Court on appeal reversed his decision and *held* that oral evidence, if believed, may be as good for proving a man's title as documentary evidence. *DURBAN FAKKER v. NOBINCHANDRA MAZUMDAR* - - - - - i S. N. xvi

3. — *Suit for possession.*] Where, in a suit to recover possession of land, the plaintiff succeeded in proving that he had been in possession up to a recent date, and that he had been forcibly dispossessed by the defendant, the lower Appellate Court threw upon the defendant the burden of proving his title, and on his failing to do so, decreed the case. *Held*, that this was a fair inference of title and of a right to be replaced in possession without going further into the title, that is, to the mode of its acquisition. *TRILOCHAN GHOSE v. KAILAS NATH SIDHANTO BHOWMIK BHUTTA-CHAEJI* - - - - - iii A. C. 298

4. — *Suit for declaration of—Onus probandi—Production of title-deeds.*] The plaintiff sued for declaration of her title to property of which the defendant was in possession, but of which she produced the title-deeds in favor of herself. *Held*, the onus was on the defendant to disprove the plaintiff's title, and the defendant was not allowed to raise certain fresh issues; but the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favor. *SWARNAMAYI RAU v. SRINIBASH KOYAL* - - - - - vi 144

5. — *False deed set up in support of rightful claim.*] A party is not precluded from succeeding upon a title established by a genuine deed, because he sets up a false deed which, if treated as a conveyance and not as a mere confirmation, may be inconsistent with that title. *PATTABHIRAMIER v. VENCATABOW NAICKEN* - - - - - vii P. C. 136

6. — *Maurasi title—Payment of rent—Presumption.*] Continuous payment of rent for about a hundred years was held to give rise to a presumption that the tenant held under a maurasi title. *BRAJANATH KUNDU CHOWDREY v. LAKHI NARAYAN ADDI* vii 211

7. — *Possession—Proof of title and possession—Suit for injunction—Hindu law.*] *K. C.*, a Hindu, died in March, 1864, possessed, among certain other property, of a house, and leaving three sons, *R.*, *B.*, and *T.* He also left a will, of which he appointed *R.* executor, and declared that "the whole of my estate, both real and personal, and the existing shop, you *R.* are the proprietor of the whole;" *R.* was directed to furnish the expenses of the household and carry on the shop, and pay for religious observances, &c. The testator then left lega-

TITLE—continued.

cies to his daughters and others, but made no mention of his sons, *B.* and *T.* *R.* applied for probate of the will and a caveat was entered by *B.*, but the opposition was withdrawn on a compromise, and the will was proved; the compromise, however, was never carried out. In August, 1866, *R.* died, leaving a son, *M.*, and his two brothers *B.* and *T.*, surviving him, and having made a will appointing *T.* executor, and giving him the power of dealing with all the property. *T.* applied for probate, but was opposed by *M.*; but on 23rd May, 1867, probate was granted. On 26th March, 1867, *B.* and *T.* mortgaged a two-third share in the house to the defendant, and on default in payment of the mortgage debt, the defendant obtained a decree for payment or sale on 6th January, 1868. On 17th August, 1867, *T.* mortgaged the whole house to the plaintiffs to secure payment of money borrowed to carry out *A.*'s will. The plaintiffs obtained a decree for foreclosure on 15th July, 1869, and subsequently a decree for possession. In a suit brought by the plaintiffs in possession, alleging that the defendant's mortgage and decree threw a cloud on their title, and that they would be injured by the sale, the plaintiff prayed that the defendant might be restrained by injunction from proceeding to sale, and his mortgage be brought into Court and cancelled. *Held*, that to entitle them to relief, they must prove their title as well as their possession, and on failure to do so the suit must be dismissed. *ROOPLALL KHETTRY v. MOHENDRO NATH ROY* - - - - x 271 note

TITLE, DECISION OF REVENUE COURT AS TO.
See RES-JUDICATA.

TITLE, DISCLAIMER OF.
See ADMISSION.

TITLE, INVESTIGATION OF.
See CIVIL PROCEDURE CODE, s. 214.

TITLE, NOTICE OF.
See VENDOR AND PURCHASER.

TITLE ON SALE OF GOODS.
See CONTRACT.

TITLE, PROOF OF PARTICULAR.
See POSSESSION.

TITLE, QUESTION OF.
See SMALL CAUSE COURT, MOFUSSIL.

TITLE, SUIT FOR DECLARATION OF.
See DECLARATORY DECREE, SUIT FOR.
ONUS PROBANDI.

TITLE TO LAND BETWEEN HIGH AND LOW WATER MARK.
See SPECIFIC PERFORMANCE.

TITLE TO PROPERTY SEIZED IN EXECUTION.
See BENAMI PURCHASE.

TITLE TO STOLEN PROPERTY.
See EVIDENCE, CIVIL CASES.

TITLE-DEEDS, DELIVERY OF, FOR SPECIFIC PURPOSE.
See ATTORNEY AND CLIENT.

TITLE-DEEDS, PRODUCTION OF.
See ONUS PROBANDI.
TITLE.

TITLES OF HONOR.
See PLAINT.

TOLLS—Lessee of—Act VIII of 1851.] A lessee of tolls is not a person employed in the management and collection of tolls within the meaning of Act VIII of 1851. *IN THE MATTER OF BANKA BIHARI GHOSH* - ii A. Cr. 17

TOTAL LOSS.
See INSURANCE.

TOWAGE, LIEN FOR.
See BOTTOMRY BOND-HOLDER.

TRADE, CONTRACT IN RESTRAINT OF.
See CONTRACT ACT, s. 27.

TRADE-MARK.
See INJUNCTION.

TRANSFER OF CASE BY MAGISTRATE.
See COMPLAINT.

TRANSFER OF CASE TO HIGH COURT.
See HIGH COURTS' CRIMINAL PROCEDURE ACT, s. 147.

LETTERS PATENT, CLS. 13 AND 29.

TRANSFER OF CASE TO SPECIALLY APPOINTED OFFICER FOR TRIAL—Illegal procedure by Magistrate—Power of High Court.] Where the procedure in the case of a person charged with an offence was found to be irregular and illegal, and the Magistrate was prejudiced and antagonistic to the prisoner, the High Court made an order (as in the *Banooorah case*, 4 B. L. R., Ap. 1) to transfer the proceedings to be tried by another officer appointed or deputed by the Government of Bengal to try the case. *ABDOOL KADIR KHAN v. THE MAGISTRATE OF PURNEAH* - - - - xi Ap. 8

TRANSFER OF CRIMINAL CASE.
See LETTERS PATENT, CL. 29.

TRANSFER OF PROPERTY WHILE TRANSFEROR IS OUT OF POSSESSION.
See CONTRACT.
VENDOR AND PURCHASER.

TRANSFER OF TENURE.
See REG. VIII OF 1819.
RIGHT OF OCCUPANCY.
STAMP.

2. — *Grant for purpose of living on the land.] Per PEACOCK, C. J.* — If one man grants a tenure to another for the purpose of living upon the land, that tenure, in the absence of evidence to the contrary, is assignable. *BENI MADHUB BANERJEE v. JAI KRISHNA MOOKERJEE* - vii 152

TRANSFER, REGISTRATION OF.
See BENG. ACT VI OF 1862, s. 4.
SOLE FOR ARREARS OF RENT.
LANDLORD AND TENANT.

TRANSFERABLE TENURES.
See ACT X OF 1859, ss. 15 AND 16.
ACQUIESCENCE.
PATNI TALOOK.
RIGHT OF OCCUPANCY.

TRANSPORTATION.*See SENTENCE.***TRANSPORTATION, ABSENCE BY REASON OF.***See LIMITATION ACT XIV OF 1859, s. 13.***TREASON.***See WAGING WAR AGAINST THE QUEEN.***TRESPASS.***See ACT XXIII OF 1861, s. 11.***EXECUTION OF DECREE.****MASTER AND SERVANT.****WRONGFUL DISTRAINT.**

2. — *Sale for arrears of rent—Reversal of sale for irregularity.*] *A.*, a zemindar, sold the right of *B.*, his patnidar, for arrears of rent under Reg. VIII of 1819. "This sale was subsequently set aside at the suit of *B.* for irregularity. *A.* then sued *B.* for the arrears under Act X of 1859, and *B.* pleaded limitation. *Held*, that *A.* was not guilty of a trespass in bringing the property to sale under a defective notice, and *A.* could not have sued for arrears pending the proceedings to set aside the sale. **SWARNAMAYI v. SHASHI MUKHI BARMAN**, ii P. C. 10

3. — *Suit to close doors—Cause of action—Possibility of injury.*] No suit can lie to close doors opened by a person in his own wall, on the ground of a possibility of his committing trespass on the land of the plaintiff, or of his having actually committed such trespass. It will only lie when the opening of the doors is in itself such an irremediable injury that the plaintiff would not be sufficiently compensated by money damages. **GIBBON v. ABDUR RAHMAN KHAN** - - - iii A. C. 411

4. — *Criminal trespass—Entry into family dwelling-house.*] Entrance of a member of a Hindu joint family into the family dwelling-house is not criminal trespass. The entry of a stranger into a family dwelling-house, with the permission and license of one of the members, is not criminal trespass. **IN THE MATTER OF THE PETITION OF PRANKRISHNA CHANDRA** - - - vi Ap. 80

5. — *Criminal trespass—Person not in actual possession of house—Penal Code, s. 441.*] For a legal conviction under s. 441 of the Penal Code of criminal trespass there must be an intention to intimidate, insult, or annoy a person in actual possession. To enter a house where the owner is only in constructive possession, is not sufficient. **ISWAR CHANDRA KARMAKAR v. SITAL DAS MITTER** - viii Ap. 62

6. — *Criminal Trespass—Penal Code, s. 441—Intention—Continuing exercise of right of fishery after prohibition.*] An act does not amount to criminal trespass under s. 441 of the Penal Code, unless it was committed with an intention of committing some offence, or of intimidating, insulting, or annoying some one. Where a party had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass. **IN THE MATTER OF THE PETITION OF SHISTIDHUR PARUI** - - - ix Ap. 19

TRESPASS BY CATTLE.*See NUISANCE.***TRESPASS, SUIT FOR.***See ACT XXIII OF 1861, s. 11.***TRIAL, POSTPONEMENT OF, FOR SUMMONING WITNESS.***See REVISION.*

TROVER—*Suit to recover notes lost by gambling—Act XXI of 1848—Illegal consideration—Bonâ fide holder for value—Trust for specific purpose.*] The plaintiff, the manager of the Oriental Bank, placed in the hands of *D.*, a broker, thirteen Government currency notes for Rs. 1,000 each, on *D.*'s representation that there was some company's paper at a certain place which he could procure at a more reasonable rate than in the Calcutta market, if the money were given him to purchase it. If the company's paper was not procurable, the notes were to be returned to the plaintiff. *D.* did not go to the place stipulated to purchase the company's paper; but, meeting the defendant and others, he went into a house hired for gambling, and lost at cards, and paid away to the defendant some of the notes he had received from the plaintiff. The plaintiff now sued the defendant to recover the notes so entrusted to *D.*, on the allegation that they had been entrusted by him to *D.* for a specific purpose, and that the defendant was not a *bonâ fide* holder for value. He (the plaintiff) stated in evidence "that, if the paper had been bought, he would either have taken the papers at the most favourable market price for the bank, or have sold them and given *D.* the profit." *Held*, the plaintiff was entitled to recover. The defendant was not a *bonâ fide* holder for value. *Per PAUL, J.*, in the Court below, and *per NORMAN, J.*, on appeal.—The notes were especially entrusted to *D.* for the purchase of the company's paper. *Per PHEAR, J.*—Upon the case put forward by the plaintiff, the transaction was a short loan, and not a bailment, and did not bear the character of a trust. But upon the evidence the notes were the property of the bank, and remained so in *D.*'s hands, and therefore the plaintiff was entitled to recover on behalf of the bank. **BULDEO NARAYAN v. SCRYMGEOUR** - vi 581

TRUST FOR SPECIFIC PURPOSE.*See TROVER.***TRUST PROPERTY.***See COURT FEES ACT.***TRUST, REVOCATION OF.***See ONUS PROBANDI.***TRUSTEE.***See COSTS.***HINDU LAW, ENDOWMENT.****LIMITATION ACT XIV OF 1859, s. 2.****VENDOR AND PURCHASER.****WILL.****TRUSTEE AND DIRECTOR, DISTINCTION BETWEEN.***See COMPANY.*

TRUSTEE AND CESTUI QUE TRUST—Cause of action — Adverse possession — Limitation.

When property is placed in the hands of another by way of trust, no cause of action arises to the owner until there has been a demand by the owner for the restoration of the property and a refusal by the trustee to give up the property. The period of limitation begins to run from the date of such refusal or distinct assertion of adverse right, and not from the date the trustee enters into possession. *RAKHALDAS MADAK v. MADHUSUDHAN MADAK* - - - iii A. C. 409

TRUSTS.

See HINDU LAW, WILL.

TURN OF WORSHIP OF IDOL. SUIT FOR.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 16.

UMPIRE, INCAPACITY TO ACT AS.

See ARBITRATION.

UNCHASTITY.

See HINDU LAW, MAINTENANCE.
HINDU LAW, WIDOW.

UNCORROBORATED EVIDENCE.

See APPROVERS.

UNDERTAKING NOT TO SUE.

See WARRANT OF ARREST.

UNDERTENURE, SALE OF, FOR ARREARS OF RENT.

See JURISDICTION OF CIVIL COURT.
SALE FOR ARREARS OF RENT.

UNDUE INFLUENCE.

See CHAMPERTY.
VENDOR AND PURCHASER.

UNLAWFUL ASSEMBLY—Common object—Murder—Penal Code, s. 149.]

A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. *Held* (by NORMAN, J., whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. *Held* by JACKSON, J., that he remained a member of the unlawful assembly. *QUEEN v. KABIL CAZEE* - - - iii A. Cr. 1

2. — Common object—Penal Code, s. 149.]

Where a person was killed by a member of an unlawful assembly, in prosecution of the common object of that assembly, the common object being the abduction of that person's mother.—*Held*, that all those who were members of the assembly at the time such person was killed, were guilty of the offence of killing her. *IN THE MATTER OF GOLAM ARFIN*,

[iv Ap. 47]

3. — Common object—Murder—Penal Code, ss. 149 and 300, excep. 2.] One member of an unlawful assembly, whose common object

UNLAWFUL ASSEMBLY—continued.

was to eject certain persons from a piece of land, the title to which was disputed, fired at and killed one of such persons. *Held* by COUCH, C. J., and JACKSON, PHEAR, and PONTIFEX, JJ. (AINSLIE, J., dissenting), that the act being sudden and unpremeditated, the other members of the assembly were not guilty of the offence of murder under s. 149 of the Penal Code, but of rioting armed with a deadly weapon under s. 148. *QUEEN v. SABED ALI*,

[xi F. B. 347]

UNLIQUIDATED DAMAGES.

See INSOLVENT ACT, s. 40.

UNPROFESSIONAL CONDUCT.

See PLEADER.

UNSEAWORTHINESS.

See CONTRACT.

UNSETTLED POLLIAM—Hereditary tenure—Evidence of possession or receipt of rent.]

There is no long uniform current of decisions at Madras sufficient to show that every polliam, not permanently settled, is necessarily only a tenure for life, or at the will of the Government. Each case must depend upon its own particular circumstances. The existence of a proprietary estate therein, and the tenure by which it has been held, are matters judicially determinable on legal evidence. In India the proof of possession or receipt of rent by a person who pays the land revenue immediately to Government is *prima facie* evidence of an estate of inheritance in the case of an ordinary zemindari. The evidence is still stronger if it be proved that the estate has passed on one or more occasions from ancestor to heir. There is no difference in this respect between a polliam and an ordinary zemindari. *OOLAGAPPA CHETTY v. ARBUTHNOT; COLLECTOR OF TRICHINOPOLY v. LEKAMANI; PEDDA AMANI v. ZEMINDAR OF MARUNGAPURI*,

[xiv P. C. 115]

UNSOUNDNESS OF MIND, TRIAL OF FACT OF.

See CRIMINAL PROCEDURE CODE (ACT X OF 1872), s. 425.

LUNATIC.

UPAN CHOWKI TENURE.

See MESNE PROFITS.

USER.

See RIGHT OF WAY.
PRESCRIPTION.

2. — Right to outlet for water—Easement.]

In a suit to close up an outlet of water opened by the defendant, the lower Appellate Court found that the "outlet, or *seuch*" was used (*barabar*) all along, and that therefore the defendant had a right of user. *Held*, that an enjoyment for at least twelve years is necessary to create a right by user, and that user by the defendant for that period at least had been found. *KARTIK CHANDRA SIKKAR v. KARTIK CHANDRA DEY* - - - iii A. C. 166

3. — Prescription—Ancient and uninterrupted right—Easement.] A party claiming the right of user by prescription over the property of another, must show not only that the

USER—continued.

right has existed from ancient days, but also that it has been exercised as of right, and has not been interrupted. *MALLIK JAWAD-UL-HUQ v. RAM PRASAD DAS* - - - iii A. C. 281

4. — *Period of enjoyment sufficient to create right of user.*] There is no rule of law that a certain period of enjoyment is required to establish the right of user. *MULLICK KARIM BAKSH v. HARRIHAR MANDAR* - - - v 174

USUFRUCTUARY MORTGAGE.

See LIMITATION ACT XIV OF 1859, s. 1, CL. 15.
MORTGAGE.

USURY.

See HINDU LAW, USURY.
INTEREST.
MAHOMEDAN LAW, USURY.
REG. XV OF 1793.

VAKEEL.

See ATTORNEY AND CLIENT.

2. — *Authority of vakeel — Relinquishment of part of claim.*] A vakeel has no authority under an ordinary vakalatnama to give up a portion of the claim already decreed, and any such abandonment will not be binding on his client. When a case is remanded with the specific declaration that the plaintiff shall obtain "possession of the disputed property," the lower Court has no jurisdiction to debar the plaintiff from any portion thereof by reason of a relinquishment made by the vakeel. *ABDUL SABHAN CHOWDHRY v. SHIBKISTO DAW* - - - - - iii Ap. 15

3. — *Sale in execution of decree—Collusion of vakeel of judgment-debtor with decree-holder.*] The conduct of a vakeel, who having acted in that capacity on behalf of a judgment-debtor in certain proceedings in execution of a decree, subsequently became partner with the decree-holder in the purchase of the property, remarked upon. *Quere.*—Whether, under such circumstances, the purchase by the vakeel, or the purchase by the decree-holder in conjunction with him, could not be set aside? *ROY NANDIPAT MAHATA v. URQUHART,*

[iv A. C. 181

VALUATION OF APPEAL.

See BENGAL CIVIL COURTS ACT, s. 22.

VALUATION OF SUIT.

See APPELLATE COURT.
ONUS PROBANDI.
RECORDERS' ACT, s. 27.

2. — *Costs.*] In estimating the value of a suit, the costs must not be included in the amount in dispute. *NILMADHAB DAS v. BISWAMHAR DAS* - - - - - iii P. C. 27

3. — *Suit for pre-emption.*] In a suit for pre-emption, the valuation of the property sued for is to be calculated at the market-value for which it would sell, and not at ten times the value of the sudder jumma. *ANJUD SINGH v. DEPUN SINGH* - - - iii Ap. 143

VALUATION OF SUIT—continued.

4. — *Dispute as to proper valuation.*] On a dispute arising as to the proper valuation of a suit, the Court may, on the application of either party, issue a commission and make an enquiry into the market-value or the net profits of the property in dispute. The final decision as to the proper valuation is vested in the Court which hears the suit. *UMA SANKAR ROY CHOWDRY v. MANSUR ALI KHAN v Ap. 6*

See WAJID ALI KHAN v. LALA HANUMAN PRASAD - - - - - iv A. C. 139

5. — *Jurisdiction — Appellate Court.*] Where it appears, on appeal, that the suit has not been rightly valued, and if rightly valued, the Court of first instance would not have had jurisdiction to try it, the Appellate Court may entertain the objection, though it had not been raised in the Court below. *SHEO GOBIND RAWUT v. ABHAI NARAYAN SING* - v Ap. 17

6. — *Under-valuation—Dismissing appeal, ground for.*] When a suit has been admitted upon a certain stamp, tried, and decreed for the plaintiff, "under-valuation" is no ground for dismissing the defendant's appeal. *EMAM-UDDIN KHAN v. RAMKISSORE KOWAR, v Ap. 30*

7. — *Appellate Court, power of — Act XXVI of 1867.*] An Appellate Court has no power to set aside a decision arrived at by the Court of first instance as to the valuation of the property in suit. *MAFIZUDDIN v. KARIM-UNISSA BIBEE* - - - - - vi Ap. 11

8. — *Appeal.*] Under Act XXVI of 1867 the decision of a Court of first instance as to the valuation of the subject-matter of a suit is final. *ISHAN CHANDRA MOOKERJEE v. LOKENATH ROY* - - - - - vi Ap. 12

9. — *Insufficient stamp—Appeal.*] Where an appeal was brought on an insufficient stamp, the appeal was dismissed without prejudice to the appellant bringing a fresh appeal within twenty days on a full stamp. *WALI ALAM v. BIBI NASRAN* - - - - - iii Ap. 104

10. — *Jurisdiction—Market-value of subject-matter, mode of computing—Court Fees Act (VII of 1870), ss. 6 and 12.*] For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market-value of the subject-matter of the suit, and not by the special rules applicable to valuation laid down in Act VII of 1870. *NANHOON SINGH v. TOFANEES SINGH,*

[xii 118

JEEBRAJ SINGH v. INDERJEET MAHTOON,

[xii 115 note

VARIANCE BETWEEN BOUGHT AND SOLD NOTES.

See EVIDENCE, PAROL EVIDENCE.

VARIANCE BETWEEN PLEADING AND PROOF.

See ACT X OF 1859, s. 77.

PLAINT.

2. — *Admission.*] Where the plaintiff brought a suit for rent for Rs. 185, as rent for two years, which he alleged was payable in produce, and the defendants alleged that the rent was only Rs. 29 a year, and that the

VARIANCE BETWEEN PLEADING AND PROOF
—continued.

plaintiff had sued them on a former occasion and obtained a decree at that rate, the Judge finding the defendant's case proved, *held*, that as the plaintiff had set up a false claim, he was not entitled to a decree, and dismissed the suit. *Held* on special appeal, the plaintiff was entitled to a decree for rent at the rate admitted by the defendant. **KISHEN MOHUN MOOKERJEE v. RAJOO DEY** — xiii 245 note
ROOKHINI KANT ROY v. SHARIKATUNISSA BIBI — — — — — xiii 246 note

3. — The plaintiff sued for rent at Rs. 29 a year on a jamabandi, which he alleged was signed by all the ryots when he came into possession; the defendant denied that he was a party to the jamabandi, but admitted that he held some portion of the land as tenant of the plaintiff at a yearly rent of Rs. 5, and that the balance due by him to the plaintiff was Rs. 5-15. The plaintiff failed to prove the jamabandi. *Held*, the plaintiff must, if he accepted the admission of the defendant at all, accept it as a whole, and was therefore only entitled to a decree for Rs. 5-15, and not to a decree for all the years for which he claimed rent at Rs. 4-13 per annum. **BONOMALEE CHURN MYTEE v. HAFIZUDDEEN** xiii 247 note
And see **LUKHEE KANTO DASS CHOWDEY v. SUMERRUDDI LUSKER** — — — — — xiii F. B. 243

VENDOR AND PURCHASER.See **BENAMI PURCHASE.**CONTRACT ACT, S. 73 AND S. 108.
ESTOPPEL.

2. — *Bill of sale, effect of execution of, without delivery—Specific performance.* It is very questionable in any case whether the effect of the execution of a bill of sale by a Hindu vendor is to pass an estate, irrespective of the actual delivery of possession. Where the vendor sells an estate of which he is not in possession, in consideration of advances to enable him to sue for its recovery, it is not open to the purchaser, after failing to complete his part of the contract, to claim specific performance and delivery of the recovered estate on tendering the balance of the purchase-money. **PRAHLAD SEN v. BUDHU SING** — — — — — iii P. C. 111

KALIPRASAD TEWARI v. PRAHLAD SEN,
[ii P. C. 111]

3. — *Failure to register—Suit for refund of purchase-money—Set-off.* The plaintiff agreed to purchase land and paid down the purchase-money, taking from the vendor an agreement that if he did not register the conveyance, he would return the purchase-money. The plaintiff entered into possession; but the vendor failing to register the conveyance, he sued to recover back his purchase-money. *Held*, that he was entitled to a refund of the purchase-money. The purchaser who had obtained possession might or might not, according to the particular circumstances of the case, be liable to pay the vendor a reasonable amount for the occupation of the land;

VENDOR AND PURCHASER—continued.

but when no set-off is pleaded, the vendor could only claim such amount by a separate action. **COURT OF WARDS v. NITTA KALI DEBI** — — — — — iii A. C. 353
See **GURU PRASAD ROY v. DHANPAT SINGH** [v Ap. 46]

PRABUHRAM HAZRA v. ROBINSON,
[iii Ap. 49]

4. — *Lien, concealment of—Estoppel.* In execution of a money-decree, the decree-holder caused the right, title, and interest of the judgment-debtor in a certain property, which had been mortgaged to him by a registered bond, to be sold, but without notice of the existence of such lien. He afterwards obtained a decree upon the bond, and sold it to the defendants, who caused the same property to be attached. The purchaser intervened under s. 246, but without success. In a suit by the purchaser to establish his absolute right,—*held* that, as the defendants' vendor had suppressed the fact of the charge, and thereby induced the plaintiff to purchase as the absolute property of the judgment-debtor, they were now precluded from setting up his lien. **DULLAB SIKKAR v. KRISHNA KUMAR BAKSHI,**
[iii A. C. 407]

5. — *Lien—Priority—Inchoate agreement to purchase—Deposit of earnest-money.* The claimant entered into an agreement for the purchase of certain property, and on the execution of the agreement deposited Rs. 15,000 as earnest-money of the contract and in part-payment of the purchase-money. The claimant was not satisfied at that time with the title-deeds supplied by the vendor, but afterwards entered into fresh negotiations for the purchase upon different terms. The vendor died, and the present claim was filed in a suit to administer his estate. *Held*, that the claimant was entitled to be paid in full the Rs. 15,000 in priority to all other creditors; and that his lien was not lost by the failure either of the original contract or the subsequent negotiations. **KENNY v. THE ADMINISTRATOR-GENERAL OF BENGAL** — — — — — iii O. C. 76

6. — *Mortgage by member of joint Hindu family—Surrender of equity of redemption—Purchaser for valuable consideration—Pleading.* A member of a joint Hindu family granted a usufructuary mortgage; he subsequently, without the knowledge of the co-partners, released the equity of redemption; on hearing of this, the co-partners contested the validity of the release. *Held*, that the parties claiming from the person to whom the release was made, took, so far as the co-partners were concerned, a title only as mortgagees. A pleading setting up as a defence a purchase for valuable consideration should aver the seisin of the vendor and the sale of his absolute title for good consideration. **RADANATH DAS v. ELLIOT** — — — — — vi P. C. 580

7. — *Suit for partition—Possession—Trustee—Meane profits.* Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of

VENDOR AND PURCHASER—continued.

possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. *NILKAMAL LAHURI v. GUNOMANI DEBI*, [vii P. C. 113]

8. — *Fictitious sale—Mortgagee—Suit by purchaser for confirmation of possession—Issues.* Where a sale by A. to the plaintiff had taken place shortly before a mortgage of the same property by A. to the defendant, the defendant is entitled to have raised, in a suit brought for confirmation of possession and to declare the sale valid, an issue whether the sale was *bonâ fide* and for consideration, and whether possession passed under it to the plaintiff. The proper issue is not whether the deed of sale was genuine or not. *GARBHU BHAGAT v. RUNGAL SING* - vii Ap. 33

9. — *Purchase from Hindu widow—Alienation set aside by heir—Suit by purchaser to recover money paid on mortgage.* The plaintiff purchased an estate from a Hindu widow in possession, and after his purchase he paid a debt, for which the property sold had been mortgaged by the late husband of his vendor. Subsequently the daughter of the vendor claimed the property as heir of her father, and recovered possession of it from the purchaser by suit. The purchaser now sued the heir for a refund of the amount of the mortgage-debt paid by him. *Held*, that the purchaser was entitled to recover. *POBAN MISRA v. HARSARAN MISRA* - viii Ap. 55

10. — *Notice of title—Equitable doctrine of secret ownership.* It is a rule of universal equity, and not one peculiar to English Courts, that, in order to enable the real owner of property to recover from a purchaser for value from a person allowed by the real owner to hold himself out as the owner, he must prove either direct or constructive notice of the real title, or that there existed circumstances which ought to have put the purchaser on an enquiry which, if prosecuted, would have led to a discovery of the real title. *RAMCOOMAR KOONDOD v. MCQUEEN* - xi P. C. 46

11. — *Indigo factory, assignment of—Assignee, liability of, to creditor of the factory—(Creditor, rights of—Dena powna, contract to take over.)* A., by deed duly registered, assigned his interest in an indigo factory to B. In the deed was a recital that it had been agreed that B. should take over the *dena powna* account of the factory as the same stood on the 30th September, 1856. C. sued A. and B. jointly to recover rent in respect of lands which had been occupied under a lease from C. with and for the use of the factory, and which was due on the 30th September, 1856. B. raised the defence that the debt was not included in a schedule dated 30th September, 1856, signed by A., and which he alleged had been furnished to him by A. as containing a list of the liabilities of the factory. *Held*, if a trader or other person in this country assigns his stock-in-trade and effects to another,

VENDOR AND PURCHASER—continued.

and such other person enters into a contract with the first to pay the debts of the concern, or a certain portion of such debts, the contract and assignment create a liability to the creditors in whose favor such contract is made, which they may enforce by suit; nor is the creditor bound to elect between his original debtor and the assignee, but he may join them as co-defendants in the same suit. *Held also per PEACOCK, C. J., and NORMAN, and KEMP, JJ., (dissentientibus STEER and SETON-KARR, JJ.),* the case must be remanded to the lower Court to try what was the agreement between A. and B., as to B. taking over the *dena powna* account of the factory, whether the schedule was an essential part of the contract or not. *KEARNES v. BHAWANI CHARAN MITTER*, [Sup. Vol. 54]

12. — *Bonâ fide purchase without notice of prior charge.* *Per PEACOCK, C. J., NORMAN, and PUNDIT, JJ. (BAYLEY and CAMPBELL, JJ., dissenting.)* The fact of a purchase of land under a deed of sale being *bonâ fide* and without notice of a prior charge, does not pass the land free from the prior charge. *MAHESWAR BAX SING v. BHIKHA CHOWDHRY*, [Sup. Vol. 403]

13. — *Possession, delivery of—Title—Hindu law.* Delivery of possession is not necessary to the transfer of ownership among Hindus. *Per MARKBY, J.—As a general rule of law, when a vendee has got a document which in terms professes to make over property, and the document is registered (in case registration is necessary), he becomes at once the owner without actual delivery of possession.* *GUNGAHURRY NUNDEE v. RAGHUBRAM NUNDEE* - - - - - xiv 307

14. — *Notice—Joint Hindu family, purchase from.* When a person has notice that another has or claims an interest in property for which he is dealing, he is bound to enquire what that interest is; and if he purchases without doing so, he will be bound, although the notice was inaccurate as to the particulars or extent of such interest. Where the notice is given by the person himself who claims an interest in the property, and it is afterwards proved that he had such an interest, — *quære*, whether any amount of enquiry can discharge the purchaser from liability. A purchaser, therefore, from one member of a joint Hindu family is affected with notice of the claims of the other members. On the facts *held* (reversing the decision of the Court below), that no sufficient enquiry had been made in this case. *GOBIND CHUNDER MOOKERJEE v. DOORGAPRESAD BABOO* - - - - - xiv 337

15. — *Sale whilst under attachment—Caveat emptor—Fraud—Voluntary payment.* T. sold a mouza, of which he was owner, to Z. At the time of sale, the mouza was under attachment in execution of a decree obtained against T. by R. Z. paid the amount of that decree to prevent the property which she had purchased

VENDOR AND PURCHASER—continued.

being sold in execution. *Z.* was under no obligation otherwise to pay the amount of the decree. *Held*, that *Z.* was entitled to recover against *T.* the amount so paid. *ZAHURAN v. TAYLER* - - - - - ii A. C. 86

16. — *Purchaser at revenue sale afterwards set aside — Suit to recover purchase-money—Voluntary payment.* A person who, with notice, buys property subject to a contingency, which may defeat or destroy the interest which is the subject of the sale, is not entitled to be relieved from his bargain and to recover the purchase-money, merely because the contingency contemplated actually happens, and the property either does not become, or ceases to be, available for his benefit. *RAMTUHUL SINGH v. BISSESSUR LAL SAHOO*, xv P. C. 208
Reversing the decision of the High Court in *BISSESSUR LAL SAHOO v. RAMTUHUL SINGH*, [xi 121

17. — *Fiduciary relationship — Undue influence — Attorney and client — Onus probandi.* A contract of sale or conveyance entered into by any one with a person who stands relatively to him in a position of confidence or trust, is liable to be called in question by the vendor, and to be set aside at his instance, if it be found that the other party made an unfair use of his advantages. This rule of equity applies strongly in a case where any person, acting as an attorney, or as a legal adviser, enters into a contract with his client in respect of the subject of litigation or advice. Undue influence is presumed to have been exerted until the contrary is proved, and the purchaser is bound to show that all the terms and conditions of the contract are fair, adequate, and reasonable. *PUSHONG v. MUNIA HALWANI* - - - - - i A. C. 95

18. — *Hindu executor, purchase from.* *Semble.*—A purchaser from a Hindu executor is not bound to see to the exact amount of the debts which the testator has directed the executor to pay, or even to inquire if any such debts actually existed; he need not look further than the will itself. *ROOPLALL KHETTRY v. MOHIMA CHURN ROY* - - - - - x 271 note

VENDORS, RIGHTS OF UNPAID.

See CONTRACT ACT, s. 73.

VERDICT OF CRIMINAL COURT.

See EVIDENCE, CIVIL CASES.

VERDICT OF JURY.

See CRIMINAL PROCEDURE CODE (ACT X OF 1872), s. 263.
REVISION.

2. — *Special verdict — Question put by Judge to jury after special verdict—Penal Code, s. 380.* The prisoners were tried under s. 380 of the Penal Code (for voluntarily causing hurt to a girl), and under s. 348 (for wrongfully confining her). Circumstances of aggravation were alleged, as lifting up and using a sword, of lowering the girl into a well, and of pricking her with thorns. The jury in their verdict stated that they disbelieved these

VERDICT OF JURY—continued.

allegations, and also the charge of illegal confinement, but that they believed that some slaps had been given. The Judge then asked the jury whether they convicted on either, and if so, which head of charge. They answered that they believed the prisoners had beaten the girl, and that they convicted them under s. 380. *Held*, that the question put by the Judge to the jury was a proper one, and not one of law. The conviction upheld. Such a case is not governed by the rules of English law as to special verdicts. *QUEEN v. HARI PRASAD GANGOOLY* - - - - - viii 557

VERIFICATION OF SCHEDULE BY AFFIDAVIT.

See INSOLVENT ACT, s. 5.

VESTING ORDER.

See INSOLVENCY.

INSOLVENT ACT, s. 7.

VESTING ORDER, TIME OF OPERATION OF.

See INSOLVENT ACT, s. 7.

VICINAGE.

See MAHOMEDAN LAW, PRE-EMPTION.

VOLUNTARY ASSIGNMENT.

See INSOLVENCY.

VOLUNTARY PAYMENT.

See CONTRIBUTION, SUIT FOR.

MONEY HAD AND RECEIVED.

PAYMENT INTO COURT.

RES-JUDICATA.

SALE FOR ARREARS OF RENT.

SALE IN EXECUTION OF DECREE.

VENDOR AND PURCHASER.

WAGES, MONTHLY PAYMENT OF.

See MASTER AND SERVANT.

WAGES OF COOLIES.

See ATTACHMENT.

WAGES OF LABOURERS.

See BENG. ACT VI OF 1865.

WAGES, SUIT FOR.

See SMALL CAUSE COURT, MORUSSIL.

WAGING WAR AGAINST THE QUEEN—Conspiracy to wage war—Treason—Misprision of treason—Limitation of period for prosecution—Penal Code, s. 121—7 Will. III, c. 3, s. 5.] The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war, against the Queen, under s. 121 of the Indian Penal Code, are offences under the Penal Code only, and are not treason or misprision of treason; and therefore the provisions of the Statute 7 Will. III, c. 3, s. 5, as to placing a limitation on the period for prosecution are not applicable. *QUEEN v. AMIRUDDIN*, vii 68

WAGING WAR AGAINST THE QUEEN, ABETMENT OF.

See JURISDICTION OF CRIMINAL COURT.

WAIVER OF OBJECTION.

See APPELLATE COURT, OBJECTION TAKEN FOR THE FIRST TIME IN.

WAKF.

See ACT XX OF 1863.

WARRANT, EXECUTION OF, AGAINST MOVEABLE PROPERTY.

See CIVIL PROCEDURE CODE, s. 233.

WARRANT OF ARREST—*Specification of offence*—*Issue of warrant.*] A warrant, which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed. *IN RE BIDHUMUKHI DEBI* - - - vi Ap. 129

2. — *Criminal Procedure Code (Act XXV of 1861), s. 68—Act X of 1872, ss. 142 and 150—Detention of accused.*] A warrant issued under s. 68, which is a warrant of arrest as described under s. 76 (Form B), is only for the purpose of bringing an accused person before the Magistrate. It is not a warrant for commitment, and does not authorize the detention of a person longer than is necessary for his production before the Magistrate. To detain him further, there must be a fresh warrant under s. 222, charging the prisoner with some offence, on evidence taken on oath or affirmation, and in the presence of the accused. *IN THE MATTER OF MAHES CHANDRA BANERJEE; QUEEN v. PURNA CHANDRA BANERJEE; QUEEN v. KALI SIKKAR* - - - iv Ap. 1

3. — *Act X of 1872, s. 161—Act XXV of 1861, s. 77.*] Under s. 77 of the Criminal Procedure Code, a Magistrate ought not to issue a warrant to an unofficial person, except when he is without the assistance of competent police officers, and unless the urgency is imminent. The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate, and the prisoner cannot lawfully be committed to prison or remanded without sufficient grounds; and in the absence of evidence, there can be no grounds. *IN THE MATTER OF THE PETITION OF SURENDRANATH ROY; QUEEN v. SURENDRANATH ROY* - v 274

4. — *Lessee of tolls—Disobedience of summons to appear—Undertaking not to sue.*] A., the lessee of a toll, was in arrear to Government in respect of the rent. The Magistrate issued a summons to him, whereby it was recited that a plaint had been preferred against him (A.) for not paying the sum of Rs. 262 for arrears of rent, and A. was summoned to appear before the Magistrate to answer the charge. A. did not appear on the day appointed, but had an application presented for postponement of the demand for arrears of rent, on the grounds therein stated. On the following day the Magistrate passed the following order: Whereas the debtor, defendant, has not appeared in person, the summons has not been obeyed; therefore it is ordered that a warrant be issued for the arrest of the defendant. Proceedings were afterwards taken upon the warrant. *Held*, that all the proceedings taken by the Magistrate were irregular, and must be set aside, the defendant undertaking not to take legal proceedings for anything done under the order or warrant. *IN THE MATTER OF BANKA BIHARI GHOSE*, [ii A. Cr. 17

WARRANT OF ARREST OF GOVERNOR-GENERAL IN COUNCIL.

See HABEAS CORPUS.
REG. III OF 1818.

WARRANT OF EXECUTION — *Act X of 1859, s. 88—Jurisdiction.*] Where a warrant of execution under Act X of 1859, s. 88, was extended for four days after a particular day, when the original warrant was not 60 days old, in order that more moveable property might be pointed out,—*held* that, until the time so extended had elapsed, an order for sale of immoveable property was without jurisdiction. *NABI BAX v. DIDAR BAX SHAH* - - - iii A. C. 10

WARRANT, BREACH OF.

See CHARTER PARTY.

WASTE.

See HINDU LAW, ALIENATION.

LIMITATION ACT XIV OF 1859,
s. 1, CL. 16.

2. — *Allegation of waste—Prayer for protection from contemplated waste—Limitation.*] *Held per PHEAR, J.*, that where a suit was one to prevent contemplated waste, it was not barred by lapse of time. *GROSE v. AMRITAMAYI DAS* - - - iv O. C. 1

BISWANATH CHUNDER v. KHANTAMANI DAS,
[vii 131

WHIPPING.

See SENTENCE.

2. — *Act VI of 1864, s. 4—Previous conviction*] The punishment of whipping under s. 4, Act VI of 1864, can only be inflicted on a second conviction of a person who, having served a sentence of imprisonment, again commits a crime. *QUEEN v. UDAI PATNAIK*, [iv A. Cr. 5

3. — *Act VI of 1864—Penal Code, ss. 325, 342, 378—Criminal Procedure Code (Act XXV of 1861), s. 46—Cumulative sentences.*] Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under s. 342; six months' imprisonment for the offence of voluntarily causing grievous hurt under s. 325; and to whipping with twenty stripes for the offence of theft, under s. 378 of the Indian Penal Code,—it was *held* (KEMP and PHEAR, JJ., dissenting), that the sentence was legal. Where a person is convicted at the same time of two or more offences punishable under the Indian Penal Code, *held* (KEMP and PHEAR, JJ., dissenting), that it is lawful for the Court, in addition to the penalties prescribed by the Penal Code, to sentence the prisoner to whipping. *Nasir v. Chunder* not followed. *MANIRUDDIN v. GAUR CHANDRA SHAMADAR*, [vii F. B. 165

4. — When a Magistrate, in exercise of the powers conferred by s. 46 of the Criminal Procedure Code, passes a cumulative sentence against a person convicted at one and the same time of two or more offences punishable under the Indian Penal Code,—*held per PRACOCK, C. J.*, and PHEAR and SETON-KARE, JJ., that

WHIPPING—continued.

he cannot, in addition to the penalties prescribed by the Penal Code, sentence the prisoner to whipping under Act VI of 1864; nor can he exceed twice the extent of his ordinary jurisdiction as defined by s. 22 of the Criminal Procedure Code. *Held further per SETON-KARR, J.*, that, in the case of hardened offenders, a Magistrate can award whipping in addition to the maximum of imprisonment which he is competent to award. *Held per MACPHERSON and JACKSON, JJ.*, that the Magistrate may, in such case, in addition to awarding double the punishment which may be awarded for a single offence, award the punishment of whipping; but only one whipping can be awarded. *NASSIR v. CHUNDER* - - - Sup. Vol. 951

WIDOW.

See HINDU LAW, ALIENATION.
HINDU LAW, MAINTENANCE.
HINDU LAW, WIDOW.

WIDOW, PURCHASE BY.

See BENAMI PURCHASE.

WIDOW, REFUSAL OR OMISSION OF, TO ADOPT.

See HINDU LAW, WILL.

WIFE, CUSTODY OF.

See HABEAS CORPUS.
MAHOMEDAN LAW, CUSTODY OF WIFE.

WIFE, EVIDENCE OF, AGAINST HUSBAND.

See EVIDENCE, CRIMINAL CASES.

WILL.

See HINDU LAW, WILL.
MAHOMEDAN LAW, WILL.
PROBATE.

2. — *Buddhist will—Probate—Succession Act (X of 1865), s. 331.* Probate may be granted of the will of a Buddhist made after the 1st January, 1866. It is not necessary that the will of a Buddhist should be executed according to the formalities prescribed by the Indian Succession Act. *IN THE MATTER OF KOKYA DINE* - - - ii A. C. 79

3. — *Bequest—Masses.* A bequest in a will of a sum of money for the performance of masses in Calcutta, is valid. *ANDREWS v. JOAKIM* - - - ii O. C. 148

4. — *Semble.*—The English rule of law which prohibits the bequest of money for superstitious uses, has no application in India. *JUDAH v. JUDAH* - - - v 433

5. — *Construction of—Husband and wife—Trustee—Sole use and benefit.* A testator made the following bequest in his will:—"I give, devise, and bequeath to my dearly-beloved wife all the stock-in-trade, furniture, mourning coaches, horses belonging thereto, stones, marbles, tools, implements, and materials connected with my trade and business, and all my right and interest therein; and after payment of my debts and other expenses, I give, devise, and bequeath the rest and residue of my outstandings and collections for her sole use and benefit, with liberty to continue and carry on such trade and business." The testa-

WILL—continued.

tor's widow married a second husband, and they carried on the business of the deceased together. They afterwards separated, and she brought a suit against her husband for a declaration of her right under the will, and for an account from her husband of the profits, &c., of the business during their marriage. *Held* (reversing the decision of the Court below) that, on the true construction of the will, the stock-in-trade, &c., was not bequeathed to the wife for her sole and separate use independent of any future husband; her husband did not become a trustee for her in respect of such stock-in-trade or the profits of the business, and he was not bound to render an account. *ORD v. ORD* - - - vi O. C. 53

6. — *Domicile—Rules for interpretation—Children—Accretions to property from rents.* Where a testator has an ascertained domicile, the construction of his will must depend on the law of that domicile; but if no particular law is applicable, the will is to be interpreted by principles of natural justice. In such cases, in applying the rules of Hindu, Mahomedan, or English law to the wills of Hindus, Mahomedans, or East Indian Christians respectively, their particular habits and modes of life may be looked to as a guide to the interpretation. From the context of the will and surrounding circumstances, "children" may be interpreted as illegitimate children. Where by the will the income of estates was left to devisees for life, with a gift over of the corpus on their death, and a portion of the income, instead of being divided among the tenants-for-life, was applied to the purchase of other estates,—*held*, those estates did not pass to the remaindermen, but formed the absolute property of the tenants-for-life, and passed to their devisees. *BARLOW v. ORDE* v P. C. 1

7. — *Legacy, suit for—Domestic servant—Sirang.* The testator, a Hindu, made a will in the English form and language, in which he bequeathed (*inter alia*) as follows:—"To each of my domestic servants in Calcutta who shall have been in my service ten years and upwards at the time of my death Rs. 100 for every rupee of monthly salary drawn by them from me respectively." The plaintiff had been in the service of the testator for about 40 years as sirang on board a steamer which the testator kept on the river, and in which he used to visit his zemindaries and perform other journeys by water. The plaintiff was in the habit of daily attending at the testator's residence, and there obeying any orders that might be given him. If the steamer was not needed, the plaintiff used to attend at the testator's residence from early in the morning to about one in the afternoon, returning to take his meals and stop on board the steamer. *Held*, that he was entitled to take under the legacy as a domestic servant of the testator. *DHANNU SIRANG v. UPENDRA MOHAN TAGORE* - - - viii 244

8. — *Held* on the evidence, that the plaintiff had failed to prove he was a domestic ser-

WILL—continued.

vant of the testator, so as to entitle to take a legacy under this clause. *BHIM DAS v. UPENDRA MOHAN TAGORE* — — — 1x Ap. 4

9. — *Void bequest — Charitable bequest and bequest for spiritual benefit — Uncertainty — Superstitious uses.* *N. E. J.*, a Hebrew merchant domiciled in Calcutta, and possessed of both real and personal property, died, leaving a will, by which, after appointing his mother, *K. E. J.*, and his brother, *J. E. J.*, executrix and executor thereof, and making various bequests and provisions, he made the following bequest of the residue of his property:—"And what may remain after payment of the above-mentioned sums, as well as the debts, shall remain under the control of my brothers, *S. E. J.* and *J. E. J.*, for the purpose of defraying therewith the expenses for the year, and making charitable distributions as commanded, and giving alms for my spiritual benefit according to their judgment." Held, assuming that the High Court should act in conformity with the English Court of Chancery in carrying out charitable bequests, that, as far as the bequest related to giving of alms for the testator's spiritual benefit, it was void for uncertainty. The "defraying expenses and making charitable distribution," were limited by the bequest to the year within which the testator died. *JUDAH v. JUDAH*, [v 438]

10. — *Proviso for cesser—Condition—Conditional limitation—Breach of condition—Residence.* *P. C. T.*, a Hindu, died leaving an only son *G. M. T.*, and having first made his will in the English form, whereby, after declaring that he had already made sufficient provision for his son *G. M. T.*, and that *G. M. T.* was to take nothing under the will, he gave all his property to trustees, upon trust, as to the personal estate, "to collect and get in the same" with certain specified exceptions, and thereout to pay his funeral expenses and debts "and such legacies as were not by the will postponed in payment;" and to invest the residue, and out of the annual proceeds of such investments, so far as the same would extend, to pay certain annuities and postponed legacies as they became due, and to pay such surplus income as might from time to time exist to the person entitled to the beneficial enjoyment of the real property or the surplus rents or profits thereof; with an ultimate trust, after all the legacies and annuities had been satisfied, for the person or persons entitled to the beneficial enjoyment of the real property. And as to the realty, upon trust, until all the debts and legacies had been paid, and all the annuities had fallen in, to receive the rents, and thereout in the first instance to pay the unsatisfied legacies and annuities, and to pay the surplus rents to the person or persons for the time being to whom the real estate (subject to the devise to the trustees) was given by the will. And as a first charge on the net income of the real property (after satisfying the expenses of establishments), the testator

WILL—continued.

directed the trustees to pay Rs. 30,000 per annum to the person for the time being entitled to the beneficial enjoyment of the real property or the surplus income thereof. He further directed them, after all the annuities and legacies had fallen in and been satisfied, to convey the real estate, so far as the then condition of circumstances would permit, unto and to the use of the person entitled, under the limitations contained in the will, to the beneficial interest therein. The first limitation was to *J. M. T.* for life. At the end of the limitations of the real estate, the will contained the following proviso:—"Provided always, and I hereby declare that, if any devisee, or tenant-for-life . . . shall permit or suffer the said property so devised and limited as aforesaid, or any portion thereof, to be sold for arrears of Government revenue, or shall, after attaining his majority, cease to keep up in a due state of repair, and to use as his residence in Calcutta, the said *baithukhana* house and premises where I now reside, and make use of and enjoy my library, horses, carriages, farm-yard, furniture in the said house, and jewels, gold and silver plates, &c., in my use or possession, then, and immediately thereupon, the devise and limitations in this my will contained and declared shall wholly cease and determine as to him, and the person next in succession to him, under the limitations aforesaid shall at once succeed," as if the person committing breach of such conditions had then died. The testator died in August, 1868. In December, 1868, his son *G. M. T.* instituted a suit for the purpose of avoiding and setting aside the trusts and limitations of the will, except so far as they were for payment of debts, legacies, and annuities. This suit was dismissed on the 1st of April, 1869. *G. M. T.* appealed, and on the 1st September, 1869, the Appeal Court declared him to be absolutely entitled to the personalty, subject to the trusts for payment of debts, legacies, and annuities, and entitled, on the death of the defendant *J. M. T.*, the tenant-for-life, to the realty. *J. M. T.* and others claiming under the limitations in the will, appealed to the Privy Council; and *G. M. T.* filed a cross-appeal, in which he claimed that the gift of the life-estate to *J. M. T.* ought to be declared void. By the order of Her Majesty in Council, which was dated the 9th of August, 1872, and which arrived in Calcutta in September 1872, all the limitations after the limitation to *J. M. T.* were declared void and inoperative, and it was further declared that *J. M. T.* was beneficially entitled to a life-interest in the realty, and also in the personalty directed to be conveyed or converted into a fund, subject to the payments in the will directed to be made, and to the provisions in the will not thereby declared to be void; and also, until the legacies and annuities fell in and were satisfied, to Rs. 2,500 a month out of the net rents of the realty, and also to the surplus rents of the same and the surplus interest of the personalty; and that, upon the failure or determination of *J. M. T.*'s life-interest, *G. M. T.* was

WILL—continued.

entitled as heir-at-law to the real and personal property. The proviso for cesser was not among the provisions of the will which were declared void. *J. M. T.* was one of the trustees under the will. After the testator's death the business of the estate continued, as theretofore, to be carried on in a portion of the *baitthakkhana* house: and *J. M. T.*, who had a family dwelling-house of his own, used, up to November, 1869, to attend at the *baitthakkhana* daily for the transaction of business. In November 1869, *J. M. T.* quarrelled with his co-trustees, and ceased to go to the *baitthakkhana*. In April, 1870, he demanded from the other trustees that possession of the *baitthakkhana* should be given to him, and upon their insisting on the right to occupy the portion of the *baitthakkhana* used for the purpose of the estate business, sued them for possession. In July, 1870, a decree for possession was made in his favour. The trustees appealed, and ultimately, in July, 1871, the Appellate Court made a declaration that it was consistent with the trusts of the will that *J. M. T.* should enter into possession; and the trustees were ordered to deliver to him possession of the *baitthakkhana*, except the portion of the ground-floor occupied for the business of the estate. After obtaining his decree, *J. M. T.* found that the *baitthakkhana* was in a very bad state of repair, and called upon the trustees to have proper repairs executed. On their refusal to do so, except under direction of the Court, *J. M. T.*, in December, 1871, brought a suit to compel them to effect necessary repairs: the trustees contested the suit, but in March, 1872, a decree was passed directing them to make the repairs. Subsequently repairs were begun, which were completed in October, 1872. In a suit by *G. M. T.* alleging that *J. M. T.* had committed a breach of one or more of the conditions contained in the proviso for cesser, by not residing in the *baitthakkhana* house and by neglecting to keep it in repair, and had thereby incurred a forfeiture of which the plaintiff was entitled to take advantage: *Held*, that the clause containing the provisions for cesser and shifting of the estate was intended to come into operation as a whole and not piecemeal, and, therefore, that until *J. M. T.* came into full beneficial enjoyment of the life-estate given him by the will, or at all events until he became entitled to the surplus rents, the time had not arrived when that clause was intended to apply. *Held* further, that, assuming that such time had arrived, the action of the plaintiff in contesting the right of *J. M. T.*, under the will, to occupy the *baitthakkhana* house and premises, debarred him from claiming that effect should be given to the clause of forfeiture for non-residence. Even apart from any action by the plaintiff, the conduct of the trustees in disputing the right of *J. M. T.* to possession of a portion of the *baitthakkhana* house, and refusing to repair, would suspend the operation of the forfeiture clause until October, 1872, inasmuch as it prevented him until that time from obtaining such a possession as was contemplated by the

WILL—continued.

forfeiture clause. The forfeiture clause was not brought into operation by the judgment and order of the Judicial Committee of 9th August, 1872. *Held* on the evidence, that *J. M. T.* had complied with the conditions as to residence. *GANENDRO MOHUN TAGORE v. JUTTENDRO MOHUN TAGORE* - xii 1

On appeal to the Privy Council, *held*, that as the clause provided for the cesser and determination of the life-interest of *J. M. T.* in the event of the conditions in it not being performed, his interest, notwithstanding the conditions over had been declared to be void, would cease when that event happened. *Held*, that the clause could not be construed so as virtually to defeat it, and therefore it must be held to be operative before the trusts of the will were at an end, and *J. M. T.*'s estate perfected by a conveyance. But *held* on the evidence, that there had been no breach of the condition contained in the clause. The delay in not residing before October, 1872, was not unreasonable. Where, in a condition of residence, no manner or period of residence is prescribed, but residence simply, and without definition, exclusive residence is not supposed to be meant; in such cases the occasional use of a house and keeping an establishment in it with the intention of again using it as a residence, is a sufficient compliance with the condition. *GANENDRO MOHUN TAGORE v. JUTTENDRO MOHUN TAGORE* - xiv P. C. 60

11. — *Armenian will—Devise—Absolute estate—Estate for life.*] An Armenian by his will in the Bengali language made a gift to his son in the following terms:—"I bequeath to *A.* as *salamati* my talooks (which he named) and Rs. 6,000 in cash. He shall enjoy the profits of the aforesaid talooks. On his demise his sons shall get. The mooktears shall make over to the satisfaction of *A.*" *Held*, that the will was to be construed according to equity and good conscience, and not according to English law. The rule applicable was that, unless a contrary intention appeared, the estate given was an absolute one. *A.* took an absolute estate under the devise. *BROUGHTON v. POGOSE* - - - - - xii 74

12. — *Charitable bequest—43 Eliz. c. 4—Mortmain, Statutes of—Hospital—Clause prohibiting alienation.*] A testator left his personal property to trustees in trust to pay thereout certain annuities to his son and daughter, and, after bequeathing some pecuniary legacies, devised certain immoveable property to the trustees in perpetuity in trust for the support of hospitals in the North-West Provinces, with directions that the surplus income (if any) from his personality during the lives of his children, and on the death of either of them, his or her annuity, and on the death of both of them, the whole income of the personality, should be applied in support of the hospitals. The will also contained a provision that the property should never be sold. In a suit for the construction, and for declaration of the trusts, of the will, it appeared that the

WILL—continued.

income of the personality was not more than sufficient, after payment of the legacies, to pay the annuities to the testator's children, and that the immoveable property was greatly in need of repairs and did not produce enough for the support of the hospitals, or to enable the trusts of the will relating thereto to be carried out. *Held*, that the devise for the support of the hospitals was a valid devise, and one to which the Court would give effect, as being a charitable trust within the scope of 43 Eliz., c. 4. The Statutes of Mortmain not applying to India, the Court will carry out such a trust when the subject is immoveable property, just as it would if it had been personal property. *Held* also that, if the prohibition against sale were a valid one, the Court could not order a sale merely because it would be advantageous to the charity that the property should be sold; but *held*, that the prohibition against sale was void as being repugnant to the devise, and, notwithstanding such prohibition, the trustees had power to sell, or otherwise alienate, the property for the purpose of maintaining the hospitals. *BROUGHTON v. MERCER*, [xiv 442]

13. — *Grant of probate—Attestation—Signature*—1 Vict., c. 26 (*Wills Act*), s. 9—*Succession Act* (*Act X of 1859*), s. 50.] To the will of A., a British-born subject and a member of the Bengal Civil Service, who died in India possessed of personal property only, a native servant of the testator, purporting to attest the will, appended words in the Persian character signifying "this is A.'s signature." *Held*, on an application for probate that this was not a sufficient subscription of the will. *Semble*.—A signature by mark would be a sufficient signature to a will by a witness under the Indian Succession Act. *IN THE GOODS OF WYNNE* — — — — — xiii 392

WILL, EXEMPLIFICATION OF.

See SUCCESSION ACT, s. 237.

WINDOWS OR DOORS, SUIT TO CLOSE.

See JURISDICTION OF CIVIL COURT. TRESPASS.

WITHDRAWAL OF SUIT.

See CIVIL PROCEDURE CODE, s. 97. DIVORCE ACT, s. 35.

2. — *Act X of 1859.*] A plaintiff in a suit under Act X of 1859 is entitled, at any time between the institution of the suit and the passing of the decree, to withdraw the suit, and the Court is bound to grant his application, and has then to confine its decision solely to the question of costs. *RAMCHARAN BYSAK v. HARVEY* — — — ii S.W. xi

WITNESS ABSCONDING.

See CIVIL PROCEDURE CODE, s. 365.

WITNESS, REFUSAL OF PARTY TO ATTEND AS.

See SUPERINTENDENCE OF HIGH COURT.

WITNESS, UNCORROBORATED EVIDENCE OF.

See APPROVERS. FALSE EVIDENCE.

WITNESSES.

See AMEEN.

CIVIL PROCEDURE CODE, s. 170.

COMMISSION.

CRIMINAL PROCEDURE CODE (*ACT X OF 1872*), s. 249.

DIVORCE ACT, s. 52.

EVIDENCE.

FALSE EVIDENCE.

HOLIDAY.

OATHS ACT.

PARDANASHIN WOMEN.

2. — *Judge—competent witness.*] A judge is a competent witness, and can give evidence in a case being tried before himself, even though he laid the complaint, acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. *QUEEN v. MUKTA SING*, [vi A. Cr. 15]

See contra, *THE EMPRESS v. DONNELLY*, [I. L. R., 2 Calo. 495]

3. — *Attorney—Advocate—Competent witness.*] An attorney who has acted as advocate for one of the parties, and pleaded his case in Court, can be examined as a witness in the case. *RAMFAL SHAW v. BISWANATH MANDAL*, [v Ap. 23]

4. — *Prisoner, tendering pardon to.*] Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. *QUEEN v. GAGALU* — — — vi Ap. 60

5. — *Privileges of witnesses—Action for damages—False evidence.*] Witnesses cannot be sued for damages in respect of evidence given by them in a judicial proceeding. If their evidence be false, they should be proceeded against by an indictment for perjury. *GUNESH DUTT SING v. MUGNEERAM CHOWDHRY* — — — — — xi P. C. 321

6. — *Privilege from arrest—Bona fides.*] Where a witness was arrested in execution of a decree, and the circumstances under which the arrest had taken place showed the absence of a *bona fide* belief on his part that his attendance at Court was required for the purpose of giving evidence in the case in which he had been subpoenaed, the Court refused to allow his claim to privilege from arrest. *WOOMA CHURN DHOLE v. TEIL* — — — — — xiv Ap. 13

See *IN THE MATTER OF OMRITOLALL DEY*, [I. L. R., 1 Calo. 78]

7. — *Summoning witnesses—Application for summons to cite witnesses.*] A party is entitled at any stage of the case before hearing to apply for a summons to cite witnesses without reference to the number of such applications which he may have previously made, and it is the duty of the Court to comply with such application, if any time be left before the hearing of the cause. *ANURUP CHANDRA MUKHOPADHYA v. HIRAMANI DAS* — — — iii Ap. 38
HARI DAS BAISAKH v. MIR MOAZAM HOSEIN — — — — — viii Ap. 10

WITNESSES—continued.

8. — *Application to examine a witness—Act VIII of 1859, s. 162.* No special formalities are required by s. 162, Act VIII of 1859, in an application for the examination of a witness. *BONOMALEE CHURN MYTEE v. HAFIZUDDIN*, [xiii 247 note]

9. — *Criminal Procedure Code (Act XXV of 1861), s. 318.* Although there is no mention in chap. xxii of Act XXV of 1861 of any particular provisions under which witnesses may be summoned, yet it is the duty of the Court, if parties cannot procure the attendance of their witnesses, to issue summonses for their attendance. *IN THE MATTER OF THE PETITION OF SHAMASANKAR MAZUMDAR*, ix Ap. 46

10. — A Magistrate was held to be right, under the circumstances, in not postponing the case for the purpose of summoning witnesses for one of the parties. *IN THE MATTER OF THE PETITION OF GABINDA CHANDRA GHOSH* - - - ix Ap. 39

11. — *Absoonding witness—Act XIX of 1853, s. 28—Act X of 1861—Fine for avoiding service of summons.* S. 28 of Act XIX of 1853 having been repealed by Act X of 1861, a Judge has no jurisdiction, under Act VIII of 1859, to inflict a fine for the purpose of punishing a witness who absconds, or keeps out of the way, to avoid service of summons. *IN RE GAJADHAR PRASAD NARAYAN SING*, i A. C. 186

12. — *Summoning witnesses for accused—Criminal Procedure Code (Act XXV of 1861), s. 253*] *Per AINSLIE, J.*—In a trial under chap. xiv of the Criminal Procedure Code, the Magistrate is not bound, under s. 253, to summon any witness whom the accused may require. It is only discretionary with him to do so, and in the circumstances of the present case he exercised his discretion rightly in refusing to summon the witnesses asked for. *Per PAUL, J.* (differing).—The right of an accused to have witnesses for his defence summoned during the pendency of the trial is an ordinary and natural right, and this right is not taken away, but affirmed, by s. 253; the Magistrate is bound to summon the witnesses, though it is discretionary with him to adjourn the trial. In the present case, treating it as a matter of discretion only, the Magistrate was wrong in refusing to summon the witnesses required. *QUEEN v. BHOLANATH MOOKERJEE* - - - vii 564

13. — It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence. *IN THE MATTER OF THE PETITION OF MAHIMA CHANDRA SHAH*, [iv Ap. 78]

14. — *Criminal Procedure Code, s. 375—Accused person, right of.* An accused person is entitled to have examined as a witness any person named in his list of witnesses delivered to the Magistrate: and the Magistrate should take measures to enforce the attendance of such person. *QUEEN v. ISHAN DUTT*, vi Ap. 88

WITNESSES—continued.

15. — *Refusal to summon witness for accused—Participation in charge—Illegal conviction.* A refusal to summon witnesses cited by an accused, on the ground of their being implicated in the charge, vitiates the trial and conviction. *RAM SHAHAI CHOWDHRY v. SANKER BAHADUR* - - - vi Ap. 66

16. — *Criminal Procedure Code (Act XXV of 1861), ss. 188, 207, 227, and 228—Arrest and detention of witnesses.* S. 207 gives no power to the Magistrate to call up and examine witnesses for the defence whose names have been given in a list, under s. 227, when the prisoners reserve their defence for the Court of Sessions; but under s. 228 he is bound to summon them to give evidence before the Court of Session. S. 188 only empowers a Magistrate to issue a warrant for the apprehension of a witness when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a Magistrate to commit a witness. *IN THE MATTER OF MAHESH CHANDRA BANERJEE; QUEEN v. PURNA CHANDRA BANERJEE; QUEEN v. KALI SIKKAR* - - - vi Ap. 1

17. — *Criminal Procedure Code (Act XXV of 1861), s. 266—Witnesses attending voluntarily.* In cases coming under chap. xxv of Act XXV of 1861, to which s. 266 applies, and not s. 252, the Magistrate is not obliged to call on the accused to produce his witnesses, but he must hear them if they attend voluntarily, as by s. 266, read with s. 262, they are supposed to do. *IN RE BHIKA ROY*, vii 568 note

18. — *Refusal of Court to allow witness for defence to be examined—Illegal conviction—Criminal Procedure Code (Act XXV of 1861), s. 266.* Conviction set aside on the ground of the Magistrate's irregularity in refusing, in a trial before him under chap. xv of the Criminal Procedure Code, to allow the examination of a witness who had been tendered on behalf of the accused. *QUEEN v. MAHIMA CHANDRA CHUCKERBUTTY* - - - iv Ap. 77

19. — *Examination in absence of accused.* It is illegal to examine the witnesses for the defence and to pass sentence in the absence of the accused. *BIHOORAM v. ALLAH O KOLITA* - - - 18. N. viii

20. — *Examination of witnesses by Appellate Court.* Courts should in all cases exercise the powers with which they have been entrusted by the law in the examination of witnesses, if they see that they are not properly examined through the incompetency of those who have the management of the suits. If the Munsif fails to take proper evidence, the Appellate Court should not decide the case on such evidence as there is, but having the power to call for further evidence under s. 355, Act VIII of 1859, it should take proper means for making the evidence complete. *RAMGATI v. IMITARI BANER* - - - 18. N. xx

WITNESSES—continued.

21. — *Selection of witnesses by Court.*] It is not right for the lower Court to select five out of twenty witnesses tendered for examination. It is the bounden duty of the Judge to receive all the evidence tendered, unless the object of summoning a large number of witnesses clearly appears to be to impede the adjudication of the case, or otherwise to obstruct the ends of justice. **RAMDHAN MANDAL v. RAJBALLAB PARAMANIK.**
[vi Ap. 10]

22. — *Act VIII of 1859, s. 170—Cross-examination.*] A defendant failed to appear when ordered to attend under s. 170, Act VIII of 1859. The Judge did not at once pass judgment against him, but called the plaintiff's witnesses, and refused to allow the defendant's vakeel, who was present, to cross-examine them. *Held*, that the Judge ought to have allowed the defendant's vakeel to cross-examine the plaintiff's witnesses. **PAKAKTAR v. JAKHIRAM BHAKAT** - - - ii Ap. 12

23. — *Recall of witnesses—Cross-examination.*] A Court of first instance decreed a case *ex parte* in favour of the plaintiff, and at a re-hearing did not recall the plaintiff's witnesses, whom, therefore, the defendant had no opportunity to cross-examine, and again gave a decree for the plaintiff. The lower Appellate Court rejected the evidence of plaintiff's witnesses, and reversed the decree. *Held*, that the Court of first instance should have recalled the plaintiff's witnesses, and given the defendant an opportunity of cross-examination. **RAM BAKS LALL v. KISHORI MOHAN SHAHA** - - - iii A. C. 273

24. — *Witness called by the Court—Cross-examination.*] A witness called by the Court is liable to be cross-examined by any of the parties to a suit. **TARINI CHARAN CHOWDHRY v. SABODA SUNDARI DAS** - - - iii A. C. 145

25. — *Medical witness.*] As to cross-examination by accused of medical witness called in a professional capacity, *see* **QUREN v. ISHAN DUTT** - - - vi Ap. 88

26. — *Discrepancies in statements of witnesses.*] Discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses. **BHAJU SING v. KAIF-NATH TEWARI** - - - iii A. C. 332

27. — *Evidence—Ground for discrediting witness.*] A bare allegation by a defendant in his written statement, without any proof in support of it, that a certain person is his inveterate enemy, is not sufficient to discredit that person's testimony. **KASINATH SHAHA v. DWARKANATH SIRKAR** - - - ix 216

WORKMEN.

See ACT XIII OF 1859.

WRITTEN AGREEMENT, ADMISSIBILITY OF EVIDENCE TO VARY.

See EVIDENCE, PAROL EVIDENCE.

WRITTEN STATEMENT.

See ADMISSION.

2. — *Additional written statement—Practice—Act VIII of 1859, s. 122.*] An application by the defendant for leave to file an additional written statement allowed, on condition of the defendant paying the whole costs and furnishing a copy of the additional statement to the plaintiff free of charge. Distinction made between such an application by a plaintiff and one made by a defendant. **DARMANI DAS v. SRINATH GHOSE** - - - iii Ap. 11

3. — *Irrelevant matter—Application to take written statement off the file.*] Where there was in a written statement matter irrelevant and improper, the Court, on application, ordered it to be taken off the file, with leave to file a fresh one in a week. Written statements should set out the *bona fide* nature of the defence, and nothing else. **KASUBLAL DEY v. TREMEARNE** - - - iii Ap. 12

4. — *Offer without prejudice—Irrelevant matter—Act VIII of 1859, s. 124.*] An offer without prejudice should be omitted from the pleadings. In a suit where the written statement of the plaintiff contained letters relative to an offer made by the defendants without prejudice, the Court ordered, on the application of the defendant, that the paragraphs of the written statement relating to the offer should be struck out. **HALFORD v. EAST INDIAN RAILWAY COMPANY** - - - xii Ap. 19

WRONGFUL DISMISSAL, SUIT FOR, AGAINST GOVERNMENT.

See MASTER AND SERVANT.

WRONGFUL DISTRAINT.

See JURISDICTION OF REVENUE COURT.

2. — *Crops, seizure of—Act X of 1859, ss. 142 and 143—Trespass.*] Certain sub-lessees sued in the Collector's Court the zemindar and others employed by him for the value of crops seized and carried away, under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. *Held*, that ss. 142 and 143 of Act X of 1859 applied to the case. S. 143, Act X of 1859, contemplates not only the case of a person who professes to follow the provisions of the law, though he has no power to distrain, but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons are considered by that section as trespassers, and are liable to the penalty of trespass, in addition to damages which may be awarded against them by the Revenue Court. **RADHA MOHAN NASKAR v. JADUNATH DASS,**
[iii A. C. 261]

WRONGFUL POSSESSION, CULTIVATION OF LANDS BY PERSON IN.

See MEANE PROFITS.

WRONGFUL SEIZURE IN EXECUTION.

See ACT XXIII OF 1861, s. 11.
DAMAGES, MEASURE OF.
EXECUTION OF DECREE.

ZEMINDAR.*See* GRANT OF LAND RENT-FREE.

ZEMINDAR, DUTY OF—Ancient tanks—Negligence—Statutory powers—Liability for damage occasioned by overflow of tanks.] The public duty of maintaining ancient tanks, and of constructing new ones, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, devolved upon zemindars. Such zemindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them. The rights and liabilities of such zemindars with regard to their tanks are analogous to those of persons or corporations on whom statutory powers have been conferred, and statutory duties imposed. A zemindar, if the banks of any such tank in his possession are washed away by an extraordinary flood without negligence on his part, is not liable for damage occasioned thereby. **MADRAS RAILWAY COMPANY v. ZEMINDAR OF CARVE-TINAGARAM** - - - - xiv P. C. 209

ZEMINDAR, RIGHTS OF.*See* MADRAS REG. XXV AND XXXI OF 1802.**MEASUREMENT OF LANDS.**

2. — *Co-sharer in talook.] Held*, that a zemindar, by becoming a co-sharer in the talook, does not lose his right to the joint responsibility of all the other co-sharers for the due payment of the rent; he only becomes bound to make an allowance for that portion which he as a co-sharer ought to pay. **GOBINDO COOMAR CHOWDHRY v. MANSON** - - xv 56

3. — *Claim to intermediate tenures—Proof.]* A zemindar has, as such, a *prima facie* right to the gross collections from all the mouzas within his zemindari. It is for parties setting up an intermediate tenure to prove their grant. **PRAHLAD SEN v. DURGAPRASAD TEWARI** - - - - ii P. C. 111

ZEMINDAR AND RYOT.*See* RIGHT OF OCCUPANCY.

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